



# Ventura Port District

# Human Resources Manual

Adopted October 27, 2004  
Revised October 27, 2010  
Revised July 25, 2012  
Revised June 12, 2015  
Revised October 10, 2018  
Revised December 18, 2019  
Revised July 7, 2021



## **RESOLUTION NO. 3419**

### **RESOLUTION OF THE BOARD OF PORT COMMISSIONERS OF THE VENTURA PORT DISTRICT UPDATING THE VENTURA PORT DISTRICT HUMAN RESOURCES MANUAL**

WHEREAS, on October 27, 2004, the Board of Port Commissioners ("Board") approved and adopted Resolution No. 3007, adopting the Ventura Port District Human Resources Manual;

WHEREAS, the Board of Port Commissioners approved and adopted Resolution No. 3158 (October 27, 2010), Resolution No. 3193 (July 25, 2012), and Resolution No. 3268 (March 25, 2015) adding new programs and updating new legislation or case law and modifying language to improve clarity;

WHEREAS, the Board of Port Commissioners approved and adopted Resolution No. 3362 (October 10, 2018), adding two new full-time employee incentive pay programs;

WHEREAS, the Board of Port Commissioners approved and adopted Resolution No. 3381 (December 18, 2019) updating the manual to comply with State and Federal employment laws and clarify ambiguous and/or overbroad language in a manner that comports with District practice and public agency personnel best practices;

WHEREAS, staff contracted with Liebert Cassidy Whitmore to update the Ventura Port District Human Resource Manual and updating new legislation or case law and modifying language to improve clarity; and

NOW, THEREFORE, BE IT RESOLVED that the General Manager and Port District staff are hereby authorized and directed to make the appropriate revisions to the Ventura Port District Human Resources Manual to implement the aforesaid updates as approved by the Board of Port Commissioners as set forth herein as Exhibit A and rescind Resolution No. 3381.

PASSED, APPROVED, AND ADOPTED at a Regular Meeting of the Board of Port Commissioners of the Ventura Port District held on July 7, 2021, Resolution No. 3419 was adopted by the following vote:

AYES: Commissioners Stephens, Blumenberg, Brennan, Gardina, Ashworth

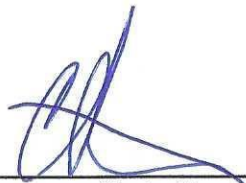
NOES:

ABSTAIN:

ABSENT:

Attest:

  
\_\_\_\_\_  
Brian Brennah, Secretary

  
\_\_\_\_\_  
Chris Stephens, Chairman



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## **I. APPLICATION**

This manual applies to all employees of Ventura Port District (hereinafter "District") who are not Members of the Board of Port Commissioners (hereinafter "Board").

### *I-A. Amendments*

The District retains the full discretion to modify the policies set forth in this manual at any time in accordance with the law and applicable Memoranda of Understanding (MOUs) by resolution of the Board.

### *I-B. Non-Employment Contract*

These rules do not create any contract of employment, express or implied, or any rights in the nature of a contract.

### *I-C. Employment at Will*

Unless otherwise expressly provided for in an applicable collective bargaining agreement, employment contract, the District Commission's governing statutes, or another part of these rules, all District Employees are employed on an at-will basis. Employment at-will may be terminated without cause and without notice at any time by the District. No manager, supervisor, or employee of the District has any authority to enter into an agreement for employment for any specified period of time or to make an agreement for employment on other than at-will terms. Only the District acting through the Board of Port Commissioners has the authority to make any such agreement, which is binding and only if it is in writing.

### *I-D. Conflict Between These Policies and Collective Bargaining Agreements*

If a provision of these policies conflicts with any provision of a valid collective bargaining agreement between the District and a recognized employee organization, to the extent of such conflict, the provision of the collective bargaining agreement shall be deemed controlling and apply to employees covered by that collective bargaining agreement.

## **II. MANAGEMENT RIGHTS**

The District shall retain, whether exercised or not, solely and exclusively, all express and inherent rights and authority necessary to determine the level of, and the manner in which, the District's activities are conducted, managed, and administered. All employees and any recognized employee representative shall recognize the exclusive right of the District to establish and maintain District-wide rules and procedures and to manage the affairs of the District in all of its various services and other aspects, including, but not limited to the following rights:

- Direct and schedule work and/or overtime work as required in the manner most advantageous to the District.
- Direct employees to perform all job duties, including those incidental job duties not expressly stated in a job description. Every incidental duty connected with operations enumerated in job descriptions is not always specifically described; nevertheless, it is intended that the employee perform all such duties.
- Discipline or discharge employees subject to the Human Resources procedures as described in Section X.
- Lay off personnel at any time as described in Section IX-D of this manual.
- Determine assignments and establish methods and processes by which assignments are performed.
- Transfer employees within departments, divisions and sections and to a position outside of a department, division or section in a manner most advantageous to the District.
- Effect reorganizations and reallocation of work of the District.
- Contract for matters relating to District operations. The right of contracting or subcontracting is vested exclusively in the District.

The inherent and express rights of the District are not in any way, directly or indirectly, subject to meeting and notice, or meeting and conferring, or the District Grievance Procedure except those specifically referred to in this manual which are expressly modified or restricted by a specific provision.

### **III. GENERAL PERSONNEL POLICIES**

#### *III-A. Equal Opportunity Employer*

The District prohibits discrimination against employees or applicants for employment on the basis of race, color, religious creed, sex, gender, national origin, ancestry, age (40 and over), marital status, physical disability, mental disability, medical condition, sexual orientation, gender identity, gender expression, genetic information, or military and veteran status or any other basis protected by law. The District affords equal employment to all qualified employees and applicants as to all terms and conditions of employment, including compensation, benefits, recruitment and selection, hiring, training, promotion, transfer, discipline and termination.

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 procedure provided in this Manual, or by contacting the U.S. Equal Employment Opportunity or Commission, or the California Department of Fair Employment and Housing.

#### *III-B. Administrative Responsibilities*

The General Manager of the District shall ultimately be responsible for all personnel matters as to all subordinate employees in accordance with all federal and state laws and regulations and these policies, but may delegate as many of the day to day functions to others as is appropriate under the circumstances.

#### *III-C. Personnel Records*

##### 1. General

The District maintains a personnel file on each employee. An employee's personnel file shall contain only material that is necessary and relevant to the administration of the District's Human Resources Programs or that is required by law. Personnel files are the property of the District, and access to the information they contain is restricted to protect employee privacy interests.

##### 2. Notifying the District of Changes in Personnel Information

Each employee is responsible to promptly notify the District of any changes in relevant personnel information including the following:

- Mailing address
- Telephone number
- Persons to contact in emergency
- Number and names of dependents
- Physical limitations that could affect his or her ability to perform essential job functions

##### 3. Location of Personnel Files

Employee personnel files will be located in the District office or in an area designated by the District. Employee personnel files will be handled in a manner that protects the privacy of the employees.

##### 4. Medical Information

Separate Confidential Files.

All medical information about an employee or applicant is kept separately from other personnel records and is treated as confidential in accordance with the Americans with Disabilities Act (42 U.S.C section 1211(d)(3)(b) and the California Confidentiality of Medical Information Act (Cal Civil Code section 56 seq.).

#### Information in Medical Files.

The District will not obtain medical information about an employee or applicant except in compliance with state and federal laws. To enable the District to obtain certain medical information, the employee or applicant may need to sign an Authorization for Release of Medical Information.

#### Access to Medical Information.

Access to employee or applicant medical information shall be strictly limited to only those with a legitimate need to have such information for District 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.

#### Authorization for Release of Medical Records.

The District will not provide employee or applicant medical information to a third party (except as permitted under the California Confidentiality of Medical Information Act, or if access is required by law, subpoena or court order) unless the employee signs an Authorization for Release of Employee Medical Information. This form may be obtained through the General Manager or his designee. The District will release only the medical information that is identified in the employee's authorization. If the employee's authorization indicates any limitations regarding the use of the medical information, the District will communicate those limitations to the person or entity to which it discloses the medical information.

### 5. References and Release of Information in Personnel Files

#### Public Information.

Upon request, the District will disclose information contained in personnel files as required by law, including the California Public Records Act.

#### Reference Checks.

All requests from outside the District for reference checks or verification of employment concerning any current or former employee must be referred to the General Manager. Information will be released only if the employee signs an Authorization for Release of Employment Information that may be obtained in the General Manager's office. Without this authorization the following limited information will be provided: dates of employment and salary range upon departure. Department heads and supervisors should not provide information in response to requests for reference checks or verification for employment, unless specifically approved by the General Manager after consideration on a case-by-case basis.

#### Medical Information.

Medical information will be released only in accordance with Section III-C.4.

### 6. Employee Access to Personnel File.

#### Inspection of File.

An employee may inspect his or her own personnel file, to the extent defined in California Labor Code section 1198.5, at reasonable times and at reasonable intervals, within 30 days of a written request. An employee who wishes to review his or her file should contact the General Manager to arrange an appointment. The inspection must be done in the presence of the General Manager or his designee and at a location where the employee works and at a time other than the employee's work time (Labor Code section 1198.5(b)(1)), or at another agreed upon location without loss of compensation to the employee. (Labor Code section 1198.5(c)(2))

**Copies.**

An employee is entitled to receive a copy of his or her personnel records within 30 days after the District receives a written request. An employee who wishes to receive such a copy should contact the General Manager or the General Manager's designee. The District may charge a fee for the actual cost of copying. (Labor Code section 1198.5(b)(1); 1198.5(b)(2)(A))

**Representative's Inspection.**

If the 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 section 1198.5(e)) The General Manager or the General Manager's designee will notify the employee and/or representative of the date, time and place of the inspection in writing.

**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.

## **IV. HOURS AND DAYS OF WORK**

### *IV-A. Work Hours*

All District employees may be assigned different work schedules, including a 5/40, 4/10, 3/12 or 9/80 work schedule depending on the needs of the District. Employees assigned to shift work may be rotated between the various shifts from time to time.

### *IV-B. Workweek*

The workweek for employees assigned to a 5/40 or 4/10 work schedule begins at 12:00 a.m. on Wednesday and ends at 11:59 p.m. on Tuesday.

Certain employee groups may voluntarily choose to work the "9/80 Alternative Workweek Schedule". The eligible employee groups are Maintenance Department including the Maintenance Supervisor and the Administration Department including the Marketing Department and the Marina Manager.

The "9/80 Alternative Workweek Schedule" allows a participating employee to work four (4) 9-hour days plus on (1) 8-hour day in one seven-day period and four (4) 9-hours days in an alternating seven-day period without the accrual of overtime. For all employees working a 9/80 work schedule, the workweek shall begin exactly four hours into the 8-hour shift on the day of the week that corresponds to the employee's regularly scheduled alternating day off. Participating employees working longer than nine hours but no more than twelve hours in a day pursuant to the alternative workweek schedule, or more than forty hours per workweek, shall be paid an overtime rate of compensation of one and one-half times the regular rate of pay. If a District holiday falls on an employee's regularly scheduled day off while participating in the 9/80 workweek, that employee will accrue nine hours of Comp Time. This Comp Time must be used within two months after the employee receives the approval from the employee's supervisor.

The "3/12 Alternative Workweek Schedule" allows a participating employee to work three (3) 12-hour days plus on (1) 8-hour day in one seven-day period (44 hours) and three (3) 12-hours days in an alternating seven-day period (36 hours) without the payment of an overtime rate of compensation accrual of overtime. For all employees working a 3/12 work schedule, the workweek shall begin exactly four hours into the 8-hour shift on the day of the week that corresponds to the employee's regularly scheduled alternating day off.

### *IV-C. Work Periods*

The General Manager may designate different workweeks or work periods for different employees or groups of employees. The designation will include the time of day and day of week on which the employee's workweek begins. If the District assigns employees to a public safety "FLSA 7(k)" work period, the designation must include the starting time and length of each employee's work period.

### *IV-D. Meal Period*

Non-exempt District employees who work six hours per day or more shall be entitled to a 30-minute to 60-minute non-compensated meal period within five hours of beginning a workday provided that they are relieved of anticipated responsibilities and are free to leave the District during the meal period. A non-exempt employee may not waive a meal period in order to shorten his or her workday. A non-exempt employee that works through his or her meal period shall document the hours on his or her timecard as time worked.

Employees who are not relieved from job duties or are restricted to the District's property during meal periods are entitled to a 30-minute paid meal period, including those employees assigned to shift work in the Harbor Patrol and Courtesy Patrol who are required to be within hearing proximity of any District radio during the meal period

### *IV-E. Rest Period*

A fifteen (15) minute compensated rest period shall be provided to all District non-exempt employees for each four (4) hour period of service. The rest period shall be taken at a time designated by the employee's supervisor, is not cumulative and may not be combined to shorten the workday or to extend the meal period.



## V. HUMAN RESOURCES PROCEDURES

### V-A. Hiring and Recruitment

#### 1. Vacant Positions

When a full-time regular or a part-time regular position becomes vacant for which an open examination is to be held, the position shall be advertised in one local or regional newspaper that has substantial circulation in areas with large minority populations. Announcements of all open, closed and promotional positions shall also be posted on the bulletin board at the Ventura Port District office. Such announcement shall specify the following:

- Title and pay for the position
- The nature of the work to be performed and essential job duties of the position
- The minimum qualifications
- The desirable qualifications
- The time and location of the examination or selection interview
- The closing date for the application if one is established
- A medical examination, including a drug screen, will be required, post-offer of employment.
- Any other information as determined in the discretion of the General Manager or designee

#### 2. Reasonable Accommodation

An applicant with a disability may request accommodation in an examination process. Following a receipt of a request for accommodation, the District may require additional information, such as reasonable documentation of the existence of a disability. The District will comply with the employment-related reasonable accommodation requirements of the California Fair Employment and Housing Act and the Americans with Disabilities Act. An employee or applicant who alleges a denial of a reasonable accommodation may file a complaint pursuant to Section XII-E "Complaint Procedure for Discrimination or Harassment" of this manual or with the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission.

#### 3. Selection Process

Candidates for positions may be asked to perform and/or submit to written, oral, performance, physical and/or medical examinations. All examinations shall be conducted by or arranged for by the General Manager or his or her designee.

The District administers two general types of examinations: (1) An "open" examination, which is open to all persons who the General Manager or his or her designee determines are the most highly qualified for the position; and (2) a "closed" examination, which is an examination limited to present District employees.

#### 4. Pre-Employment Investigation

As part of the selection process, the District will require finalists to sign an authorization form allowing the District to conduct reference, general background, previous employment, DMV, and criminal checks in compliance with state law. Refusal to sign the background investigation authorization form will result in the finalist being excluded from the selection process.

#### 5. Eligibility to Work in United States

As a prerequisite to being hired by the District, each potential employee will be required to complete a Form I-9 and meet the Employment Eligibility requirements of the United States Department of Homeland Security.

#### *V-B. Employment Classifications*

All authorized position classifications shall be included in the Salary Resolution and will have job descriptions. The establishment of salary will be in accordance with the education, experience, duties and responsibilities of the employee. All job descriptions will identify that classification as exempt or non-exempt as required by the Department of Labor under the Fair Labor Standards Act (FLSA).

#### *V-C. Exempt vs. Non-Exempt Employees*

For purposes of payment of overtime pay and hours of work, District employees will fall into one of two categories: Exempt and Non-Exempt. Exempt employees are defined in the FLSA regulations. Those employees who do not meet the definition of Exempt employees under the FLSA are Non-Exempt employees.

#### *V-D. Employment Status*

District employees will fall into one of nine categories of employment status:

##### 1. Probationary Employees

Regular Full-Time and Regular Part-Time employees will be considered probationary from their date of hire until they have completed one year of continuous service for the District. The probationary period is a period of time during which the employee's supervisor will observe and evaluate the employee's ability to meet the expectations of the District regarding performance, attitude, conduct, and qualifications for the position in which they were hired. The probationary period is considered part of the selection process. The employee shall receive at least two formal evaluations during the probationary period.

##### Rejection During Initial Probation.

During the 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. During the initial probationary period a probationary employee is an at-will employee and may be dismissed at any time without cause and without the right of appeal.

##### Probation After Promotion.

On accepting a promotion, an employee serves a new probationary period of six (6) months of actual and continuous service. Periods of time on paid or unpaid leave exceeding five (5) days (consecutive or not) shall automatically extend the probationary period by the number of days the employee is on leave. An employee does not acquire regular status in the promotional position until the successful completion of this probationary period. If the employee fails to satisfactorily complete the probationary period in the promotional position, the employee shall be entitled to return to the position held prior to promotion at the pay rate or step held prior to promotion if there is a vacancy in the prior position or if a vacancy can be created by terminating a probationary employee. If there is no vacancy, the employee shall be assigned to a vacant position that is nearest the employee's prior position. The employee is not entitled to notice of a hearing with regard to an employee's failure to satisfactorily complete the probationary period in the promotional position.

##### Report at Conclusion of Probationary Period.

At the end of the probationary period, there shall be a written report of probationary performance, which will document whether the probationer is to become a Regular employee. The probationary period may be extended only for the amount of time, if any, that the Probationary employee was absent from employment during the probation period.

##### 2. Regular Full-time Employment

Employees who successfully complete their probationary period and who regularly work a minimum of 40 hours per week shall become full-time employees and shall be entitled to

the benefits and leaves provided to other employees in the same classification and provided in these Policies, unless otherwise provided in an MOU.

3. Temporary Employees

Employees who are selected without following the District's selection process to perform specific tasks may be employed up to 180 working days or until the task or project has been completed. The period of temporary employment may be extended for an additional 180 working days. Temporary employees serve at the pleasure of the appointing authority, have no property right in continued employment, and have no right to any pre or post-disciplinary procedural due process or evidentiary appeal. Temporary employees are not eligible for benefits but may have rights to leave under the law or these Policies, depending on the number of hours they work.

4. Regular Part-time Employment

Employees who regularly work less than 40 hours a week but 20 hours or more a week and who successfully complete their probationary period shall become regular part-time employees and shall be entitled to regular part-time status equal to the hours worked when compared to 40 hours per week.

Employees working less than 20 hours per week do not acquire regular status and are not entitled to benefits. Part-time employees may have rights to leave under the law or these Policies, unless otherwise provided in an MOU, depending on the number of hours they work, such employees serve at the pleasure of the General Manager, have no property right in continued employment, and have no right to any pre or post-disciplinary procedural due process or evidentiary appeal.

5. Emergency Employees

Employees who are needed to perform emergency work may be employed at any time without following the District's selection process. These employees are considered to be at-will and serve at the pleasure of the appointing authority, have no property right in continued employment, and have no right to any pre- or post-disciplinary procedural due process or evidentiary appeal. Emergency employees are not eligible for benefits but may have rights to leave under the law or these Policies, depending on the number of hours they work.

6. Seasonal Employees

Employees who are needed to perform work on a regular seasonal basis may be employed without following the District's selection process. These employees are considered to be at-will and serve at the pleasure of the appointing authority, have no property right in continued employment, and have no right to any pre or post-disciplinary procedural due process or evidentiary appeal. Seasonal employees are not eligible for benefits but may have rights to leave under the law or these Policies, depending on the number of hours they work.

7. Per Diem

Employees who are needed to perform work by the day may be employed without following the District's selection process. These employees are considered to be at-will and serve at the pleasure of the appointing authority, have no property right in continued employment, and have no right to any pre- or post-disciplinary procedural due process or evidentiary appeal. Per Diem employees are not eligible for benefits but may have rights to leave under the law or these Policies, depending on the number of hours they work.

8. Provisional

Employees who are needed to perform work until a regular Full-Time employee can be employed to do work until a certain situation or condition has ended. These employees usually work for a limited period of time and would rarely work more than 1000 hours.

These employees are considered to be at-will and serve at the pleasure of the appointing authority, have no property right in continued employment, and have no right to any pre or post-disciplinary procedural due process or evidentiary appeal. Provisional employees are not eligible for benefits but may have rights to leave under the law or these Policies, depending on the number of hours they work.

9. Volunteer

Volunteers are not considered employees, but instead are individuals who provide services to the District for civic or philanthropic reasons. Volunteers are not paid any salary, nor do they receive any benefits. Volunteers may be transferred to meet the needs of the District and their work contributions may be ended depending upon the need of the District. A volunteer serves at-will and may be removed at any time without cause, notice or any right of appeal.

*V-E. Employee Orientation*

During an employee's first few days of employment, the employee will participate in an orientation program conducted by various members of the employee's department, including the employee's supervisor. During this program, the employee will receive important information regarding the performance expected and required of the employee, District policies, compensation, and benefit programs, as well as other information necessary to acquaint the employee with District policies. The employee will also be asked to complete all necessary paperwork at this time, such as medical benefit plan enrollment forms, beneficiary designation forms, appropriate Federal, State, and local tax forms, and other necessary administrative forms.

The District strongly encourages new employees to ask any and all questions they may have during the orientation program so that they will understand all guidelines that affect and govern their employment relationship with the District.

*V-F. Transfers of Position*

1. Voluntary Transfer

Employees with one year of satisfactory or better service may initiate a request to transfer to another position in the same or lower classification for which the employee is qualified in the opinion of the General Manager.

The "Request" must be in writing to the General Manager and include the employee's qualifications for the transfer position.

The General Manager will consider the best interests of the District prior to authorizing any employee requested transfer.

Approval or rejection of voluntary transfer requests will be at the discretion of the General Manager and not subject to appeal or review.

2. Promotion

Employees may be offered a vacant position, for which they are qualified, at the discretion of the General Manager. The employee will serve a promotional probationary period as detailed in Section V-D1.

3. Demotion

Employees may be demoted in the event of a reduction in personnel due to lack of work, lack of funds, the employee's inability to perform his or her required duties, or for disciplinary reasons, at the discretion of the General Manager. In the event that a Regular employee is demoted for disciplinary purposes, that employee is entitled to the appeals procedure set forth in Section X-C "Disciplinary Appeals Procedures" of this Manual.

#### 4. Involuntary Transfer

The General Manager shall have the authority to involuntarily transfer an employee at any time for efficiency, health conditions, safety, morale or other grounds beneficial to the District.

Whenever possible, an employee being transferred from one position to another position in the same class, or a comparable class at the same salary level, shall receive five (5) working days' notice. If the transfer requires the employee to move equipment from one location to another, the employee shall receive seven (7) working days' notice.

#### *V-G. Nepotism Policy*

The District 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.

For purposes of this section, "relative" means child, stepchild, parent, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, nephew, or in-laws of those enumerated by marriage or domestic partnership.

For purposes of this section, "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.

For purposes of this section, "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 him or her by the District.

##### 1. Relatives

The District 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;

A potential for creating an adverse impact on supervision, safety, security, morale or efficiency.

##### 2. Spouses or Domestic Partners

The District 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:

- One spouse or domestic partner being under the direct supervision of the other spouse or domestic partner; or
- Spouses or domestic partners in the same department, division, section, or facility has the potential to create adverse impact on supervision, safety, security or morale or involves potential conflicts of interest.

If two employees who work in the same department later become spouses or domestic partners, the General Manager will attempt to transfer one spouse to a similar position in another department, division, section, or facility. Although the wishes of the involved parties as to which spouse/domestic partner is to be transferred will be considered, the General Manager retains sole discretion to determine which employee will be transferred based upon the District's needs for supervision, safety, security or morale. If any such transfer results in a reduction in salary or compensation, the same shall not be considered disciplinary in nature and shall not be subject to any form of administrative appeal.

If continuing employment of two spouses or domestic partners who work in the same department cannot be accommodated consistent with the District's interest in promotion of

safety, security, morale and efficiency, then the District retains sole discretion to separate one spouse from District employment. Absent resignation by one affected spouse or domestic partner, the less senior of the involved spouses or domestic partners will be subject to separation. Any such separation shall not constitute discipline and shall not be subject to any administrative appeal.

## **VI. COMPENSATION**

### *VI-A. Determination of Compensation*

The General Manager's salary shall be negotiated with the Board. Any employee with an employment agreement shall have his or her rates of pay or salaries established annually through negotiation with the General Manager and/or the Board in conjunction with the annual District budget.

Rates of pay for other employees may be based on either a pay range based on merit or a step system based on length of service and satisfactory performance.

#### 1. Merit Increase

Adjustments within a Pay Range will be based on individual merit. Merit encompasses an employee's knowledge, experience, ability, and performance, among other factors. A merit increase is considered as being earned by an employee. A merit increase is advancement to a higher rate in the employee's classification pay range. A merit increase is based on satisfactory or better work performance and must be accompanied by a current employee evaluation prepared and signed by the employee's supervisor and signed and approved by the General Manager. The employee shall acknowledge receipt of such evaluation in writing.

Each year during the budget process and at such other times as the Board of Port Commissioners shall determine in its discretion, the Board of Port Commissioners shall review the rates of pay to ensure that the specified salary ranges are appropriate for identified positions given the duties and responsibilities of such positions.

### *VI-B. Pay Periods*

District employees are paid bi-weekly by check or direct deposit every other Friday.

### *VI-C. Deductions*

The District shall deduct from all employees' paychecks all legally required withholdings and deductions. Employees may request and authorize in writing that the District make other deductions for other voluntary programs as approved by the General Manager.

### *VI-D. Overtime: Fair Labor Standards Act Provision*

The District is subject to applicable FLSA provisions regarding overtime compensation.

#### 1. Non-Exempt Employees

The District as a matter of general policy does not permit employees to work overtime; however, non-exempt employees may be required to work overtime at the discretion of the General Manager.

Overtime for non-exempt employees is defined as hours assigned to be worked and actually worked (except for authorized FLSA 207(k) work periods and as otherwise set forth in a MOU) in excess of their scheduled workday or forty (40 hours) in the designated seven (7) day workweek.

Non-exempt employees shall obtain authorization to work all overtime. A non-exempt employee who works unauthorized overtime may be subject to disciplinary action. Each Department shall establish procedures for obtaining authorization for overtime.

Non-exempt employees working authorized overtime shall accrue compensatory time off at one and one-half hours (1-1/2) per hour worked.

A non-exempt employee may not accrue more than 40 hours of compensatory time off at any one time.

## 2. Exempt Employees

Exempt Employees are not eligible to receive pay or compensatory time off for working in excess of their scheduled workday or over 40 hours per week.

### *VI-E. Compensatory Time Off Account*

A compensatory time off account will be maintained for employees required to work on a holiday or overtime. A worksheet of this account will be included in each employee's pay envelope to assist the employee in tracking this information. The District reserves the right to correct any errors in this worksheet.

All compensatory time off accrued will be paid off at the employee's current regular rate of pay in the last pay period of each quarter, unless the employee requests to have the compensatory time carried over by submitting a request in writing to the General Manager at least seven (7) days prior to the end of the quarterly pay period. The General Manager will determine whether to allow or disallow the compensatory time to be carried over to the following quarter. In no event will time be carried over beyond one subsequent quarter.

An employee may not accrue more than 40 hours of compensatory time off.

All compensatory hours accrued by an employee shall be paid off immediately prior to the effective date of any increase in pay.

### *VI-F. Performance Reviews*

Once annually at the end of each calendar year, a non-probationary employee's supervisor will prepare and sign a performance evaluation on a District form for each annual performance evaluation period. More than one performance evaluation may be provided to the employee during the course of the annual evaluation period at the discretion of the supervisor.

The annual review process is meant to be a review not only of the performance of the employee, but also of the District. Employees are in the best position to evaluate the overall effectiveness, efficiency and organization of the District, and for that reason the District strongly encourages employees to evaluate the District's performance not only in regard to personnel matters, but also with regard to its overall effectiveness, productivity, and service to the public.

#### *Performance Review Meeting*

In conjunction with the written performance evaluation, the supervisor will meet with the employee to discuss the evaluation. The written evaluation shall be presented to and reviewed with the employee. The employee shall sign or otherwise acknowledge receipt of such written evaluation. Employees are strongly encouraged to use this opportunity to ask questions about their performance, their prospects for advancement within the District, and any other matters relating to their employment.

#### *Employee Response to Evaluation*

After receiving a copy of the written evaluation, the employee will have the opportunity to review and respond to the evaluation. If the employee is not satisfied with the written report, that employee shall be entitled to the appeal procedure provided for in this Manual under Section X, "Grievance Procedures." All documentation concerning the review becomes a part of the employee's personnel file.



## **VII. BENEFITS**

### *VII-A. Insurance*

#### 1. Health and Dental

The District provides a monthly sum, as established by resolution of the Board of Port Commissioners that all Probationary and Regular employees may apply toward the cost of general health and dental insurance for themselves and their dependents. Employees may include additional coverage, both for themselves and for their dependents, at their own expense. The effective date of coverage and the terms of the coverage of the insurance plans shall be governed by those plans.

#### 2. Life Insurance

The District furnishes and pays for group insurance for all Probationary and Regular employees, if insurable. The effective date of coverage and the terms of the coverage shall be governed by the plan. The death benefit shall be equal to the annual base earnings of the employee.

#### 3. Long-Term Disability Insurance

The District provides long-term disability insurance coverage for all Regular and Probationary employees. The effective date of coverage and the terms of the coverage shall be governed by the policy. Once an employee is declared totally disabled pursuant to the terms of said disability insurance policy, the employee shall be eligible to receive sixty percent (60%) of his or her full salary during the 90-day "elimination period" specified in the policy. The District shall commence this payment only after the employee has utilized all sick leave, vacation time and compensatory time off to which he or she is entitled.

#### 4. Unemployment Insurance

The District provides and pays for unemployment insurance under a program administered by the State of California, Employment Development Department. In the event of unemployment, weekly benefits are available under terms and conditions of the program.

#### 5. Workers' Compensation Insurance

The District provides Workers' Compensation Insurance for all employees. The effective date of coverage and the terms of coverage shall be governed by the policy.

### *VII-B. Post-Termination Insurance Benefits (COBRA)*

Insurance benefits for Probationary and Regular employees will terminate at the time the employee, for whatever reason, is no longer employed by the District. The employee may elect to continue to be covered by health and dental at his or her expense for the duration established by law, usually eighteen (18) months. The employee must request coverage in writing and remit to the District on a monthly basis the amount of the insurance premium plus a two percent (2%) administration fee.

### *VII-C. Retirement Plan*

The District is a member of the California Public Employees Retirement System (PERS). All Regular and Probationary employees automatically become members of the System upon entry into employment with the District. Deductions from an employee's salary are made at the rates fixed by state law; however, the District may elect, by resolution of the Board of Port Commissioners, to pay all or a part of the employee's contribution to the Retirement System. Benefits are available under terms and conditions of the program. Retirement benefits are not provided to other employee classifications unless a specific employee works more than 1000 hours in a fiscal year.

#### *VII-D. Holidays*

Each full-time employee shall be entitled to only the following holidays each calendar year with pay:

- New Year's Day (January 1)
- Martin Luther King Day (third Monday in January)
- Presidents' Day (third Monday in February)
- Memorial Day (last Monday in May)
- Independence Day (July 4)
- Labor Day (first Monday in September)
- Veterans' Day (November 11)
- Thanksgiving Day (fourth Thursday in November)
- The Friday after Thanksgiving,
- Christmas Day (December 25)
- Two personal holidays

If any of these holidays falls on a Sunday, the following Monday shall be treated as the holiday. If the holiday falls on a Saturday, the preceding Friday shall be treated as the holiday.

For Departments that have employees who regularly work weekends, the holiday shall be observed on the actual holiday regardless of day of the week on which the holiday falls.

Employees must be employed by the District on the day preceding and the day following a holiday for the employee to be entitled to a paid holiday. Employees who are on authorized paid leave are considered employed for purposes of this policy.

Employees may request to take off two days per fiscal year as personal holidays. These personal holidays will be lost if not taken in the fiscal year. Prior approval from the General Manager is required.

At the discretion of the General Manager the holiday schedule may be amended.

#### 1. Holiday Pay

Any non-exempt employee who is off on a holiday for any reason shall receive either one day of Holiday Pay or one day of compensatory time as appropriate.

Any non-exempt employee who works a holiday as part of his or her normal workweek shall receive 1.5 times his or her base hourly rate of pay for each hour worked plus one day of compensatory time.

Any hours a non-exempt employee works on a holiday over his or her normal workday shall be paid at double-time of the employee's base hourly rate of pay.

Any non-exempt employee who works a holiday in addition to his or her normal workweek shall receive double-time of the employee's base hourly rate of pay for hours worked plus one day of compensatory time off.

Exempt employees shall receive one day of Holiday Pay at his or her base rate of pay for each of the approved District Holidays. If an exempt employee is required to work on any District Holiday, he or she shall receive one hour of compensatory time off for each hour actually worked on the holiday.

#### 2. Part-time Employees

Part-time employees shall be paid at one and one-half times their base hourly rate of pay for working a Holiday.

#### *VII-E. Vacation*

The purpose of annual vacation leave is to enable each eligible employee to take vacation leave and return to his or her work mentally and physically refreshed. Scheduling of vacation time will be at the discretion and with the approval of the General Manager. Every effort will be made to accommodate employee vacation requests within the constraints imposed by the District's operational needs. Upon separation from service, employees will be paid for any unused accrued vacation. With approval, all employees shall be entitled to take their accrued annual vacation leave with pay as follows:

##### 1. Accruals

Probationary employees do not accrue vacation. Upon successful completion of a probationary period, employees will be credited 80 hours of vacation time.

Full-time Regular employees with less than five (5) years of service shall accrue vacation hours at the rate of 3.08 hours per bi-weekly pay period or 80 hours per year.

Full-time Regular employees, with five (5) years of service but less than ten (10) years of service, shall accrue vacation leave at the rate of 4.6154 hours per bi-weekly pay period or 120 hours per year.

Full-time Regular employees with ten (10) years of service or more shall accrue vacation leave at the rate of 6.153 hours per bi-weekly pay period or 160 hours per year.

Regular Part-time employees accrue vacation directly in proportion to a Regular Full-Time assignment. For example, a Regular Part-time Employee who works 30 hours per week, will accrue vacation at .75 the Full-Time rate.

Vacation Leave will not accrue during leaves of absence without pay unless required by law (e.g. military leave)

##### 2. Maximum Vacation

The maximum vacation accrual is limited to two hundred fifty (250) hours. Employee is paid off quarterly for hours in excess of 250 hours in his or her vacation accrual bank at the employee's base hourly rate of pay. When a paid holiday falls during the period of an employee's vacation leave, that day shall not be charged against the employee's vacation accrual.

Vacation hours accrued in excess of two hundred and fifty (250) will be paid at the employee's base hourly rate of pay.

#### *VII-F. Administrative Leave with Pay*

The District shall have the right to place an employee on administrative leave with full pay at any time when it is determined that the employee's or the District's best interests warrant the leave.

The employee has no right to appeal the decision to be placed on paid administrative leave.

#### *VII- G. Sick Leave*

##### 1. Accrual of Sick Leave

Regular Full-Time employees.

Sick leave shall accrue at the rate of 3.5 hours per pay period up to a maximum accrual of 720 hours. Accrued sick leave carries over from year to year. If permitted by the District's retirement system, sick leave accrual in excess of 720 hours may be allowed for purposes of calculation of retirement benefits only.

Regular Part-Time employees.

Sick leave shall accrue at the same hourly rate of accrual for Regular Full-Time employees prorated by the number of hours worked each pay period.

In accordance with California's Paid Sick Leave law and Labor Code section 233, Part-time, Per Diem and other employees that work a minimum of thirty days in a year have the following sick leave benefits:

- An employee must be employed by the Ventura Port District for 90 days before being entitled to use paid sick leave;
- Sick leave will accrue at a rate of one hour for every thirty hours worked;
- Employees may take a maximum of three days or 24-hours of sick leave per year;
- Unused Sick Leave will carry over to the next year to a maximum of six days or 48 hours;
- An employee may only take paid sick time for a day in which s/he is scheduled to work;
- These employees shall not be eligible for "Non-Accrued Sick Leave" as provided in Section VII-G 2.

2. Use of Non-accrued Sick Leave

At the General Manager's discretion, a maximum of six (6) days of non-accrued sick leave may be granted to an employee with a physician's certification. Any non-accrued sick leave granted shall be repaid at the same rate sick leave is accrued by the employee. In the event the employee's employment is terminated or the employee separates before the non-accrued sick leave has been repaid, any remaining hours that have not been accrued shall be deducted from the employee's final paycheck with written authorization from the employee.

3. Sick Leave Use

In accordance with California's Paid Sick Leave law and Labor Code section 233, an employee may use one-half of their available annual accrual of sick leave in a 12-month period for one of the following reasons:

- a. diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or any of the following of the employee's family members: child of any age or dependency status; parent; parent-in-law; spouse; registered domestic partner; grandparent; grandchildren; or sibling; or
- b. for an employee who is a victim of domestic violence, sexual assault, or stalking to: i) obtain or attempt to obtain a temporary restraining order or other court assistance to help ensure the health safety or welfare of the employee or his or her child; or ii) obtain medical attention or psychological counseling; services from a shelter; program or crisis center; or participate in safety planning or other actions to increase safety.

Any additional paid sick leave provided to an employee beyond the use of one-half of their annual accrual of sick leave can only be used for the employee's own diagnosis, care, or treatment of an existing health condition or preventative care.

Sick leave shall not be granted to any employee to permit an extension of the employee's vacation.

The General Manager may require that regular full-time and part-time employees provide a physician's certification to support any absence that involves the illness of the employee or family member if the District suspects that there is an abuse of sick leave by the employee. All employees 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.

The General Manager, at the District's expense, may require an employee who has been absent from work due to illness for seven (7) consecutive days to have a physical examination performed by a physician designated by the General Manager to determine the employee's fitness to return to duty.

Unless authorized by the General Manager, no more than six (6) days of accumulated sick leave credits may be allowed to an employee within any calendar year for absence from duty because of death, serious illness, or injury of members of the employee's immediate family. For the purpose of this Subsection "immediate family" shall mean the spouse, domestic partner, parent, sibling, child, grandchild, grandparent, mother-in-law or father-in-law of an employee.

Sick leave shall not be granted to any employee absent from duty due to willful misconduct on the job.

Sick leave shall not be granted to any employee absent from duty after separation from the District's service or during a District authorized leave of absence without pay, or any other absence from duty not authorized by the District.

Abuse of sick leave, which is defined as a claim of entitlement to sick leave when the employee does not meet the requirements of sick leave as defined herein, shall be subject to disciplinary action.

#### 4. Notification

Prior to Shift.

In order to request sick leave, an employee shall notify the appropriate immediate supervisor or the General Manager no later than one (1) hour after the time established as the beginning of the employee's workday.

During Shift.

An employee who becomes sick during his or her shift shall immediately notify his or her immediate supervisor to request permission to use sick leave for the remainder of the shift.

#### 5. Sick Leave Administration

The General Manager shall be responsible for the administration of the use of sick leave.

#### 6. Use of Sick Leave When Disabled

An employee's entitlement to receive sick leave payments shall terminate when said employee becomes eligible to receive disability payments.

#### 7. Job Related Injury

An employee, other than those covered by Labor Code Section 4850, who receives Workers' Compensation benefits as a result of an injury suffered while working for the District is entitled to receive from the District the difference between Workers' Compensation benefits and the employer's regular pay. Any such payments will be charged first to accrued sick time, next to compensatory time off, and then to accrued vacation time.

Once all sick time and vacation time is used, the employee will receive only Workers' Compensation benefits for as long as the employee remains off the job.

Sworn Police employees covered by Labor Code Section 4850 *et seq.* will be allowed up to one-year leave of absence for an industrial injury or illness without loss of salary in lieu of disability payments, consistent with state law. The employee will continue to accrue sick leave and vacation benefits while in paid status.

8. Sick Leave on Termination

Employees who are terminated or otherwise leave the employment of the District shall receive compensation for unused sick leave, computed pursuant to section IX-G.1. "Payments Upon Termination of Employment."

*VII-H. Sick Leave Bank*

1. Donation Procedures

Eligible employees with more than 80 hours of accrued sick leave may transfer up to six (6) days or 48 hours of sick leave hours to the District Sick Leave Bank if the employee retains a minimum of 80 sick leave hours. These donated hours are to be given to eligible employee(s) who is/are experiencing a catastrophic illness.

A 'catastrophic illness' is a severe illness or injury which is expected to incapacitate the employee for an extended period of time and which creates a financial hardship because the employee has exhausted all of his/her accumulated paid leave time.

Donations shall be made in writing to the General Manager.

Written donations shall include the name of the employee to receive your donated sick leave hours, if known at the time of the donation, the number of hours to be donated and signed by the donor employee.

Sick leave hours donated will be withdrawn from the donor employee's accrued sick leave bank by the next pay period.

All sick leave hours donated are irrevocable.

2. Using Hours Donated to Sick Leave Bank

Only Regular Full-Time and Regular Part-Time employees are eligible to receive donated sick leave hours. Before receiving donated hours, the employee must exhaust his or her accumulated sick leave, comp time off and all but 40 hours of accrued Vacation Time. These employees must apply in writing for sick leave hours from the District's Sick Leave Bank. This written request must indicate that the employee has a catastrophic illness or injury, is disabled and unable to return to work as verified by an attached physician's statement.

The physician's statement must include an estimate of the time before the employee can return to full work or modified work.

If the employee is able to return to modified work the physician's statement must include all work restrictions.

If the employee is determined by a physician to be permanently disabled from work, the employee is no longer eligible to receive sick leave from the District's Sick Leave Bank.

The District, at its discretion, is entitled, at District expense, to require an employee who is receiving sick leave from the District's Sick Leave Bank to be examined by a physician mutually agreed upon by the General Manager and the employee.

*VII-I. Time off to vote*

If an employee does not have sufficient time outside of working hours to vote at a statewide election, the employee may take up to two (2) hours off without loss of pay at the beginning or the end of the day. The employee must request prior approval of time off to vote from the General Manager.

#### *VII-J. Jury Duty and Court Appearances*

Regular Full-Time and Regular Part-Time employees who are required to serve as a juror shall be entitled to be absent from his or her job duties during the period of such service.

Employees are required to notify their supervisor immediately to allow time for arrangements to be made to cover their duties and responsibilities while they are serving on jury duty.

Employees are required to return to work if excused from jury duty with more than one half day of their regular workday remaining.

Non-exempt employees will be paid for actual work hours missed because of time spent in jury service or court. Exempt employees will continue to receive their normal salary while on jury duty or serving as a witness in court. The District will offset from pay the amount the employee receives from the Court for jury fees.

Employees who are subpoenaed to appear in court in a case related to District business shall be allowed to do so without loss of compensation unless the employee is appearing as a party or an expert witness in a case unrelated to District business.

#### *VII-K. Bereavement Leave*

An employee may request paid time off in the event of a death in the immediate family as defined in Section VII-G.3 "Sick Leave." The employees request will identify the deceased and his or her relationship to the deceased, the number of paid and/or unpaid days requested. If the number of days exceeds three workdays, the request will give an explanation of why those days are necessary.

The General Manager shall have discretion to grant bereavement leave with or without pay.

The General Manager shall have discretion to establish the duration of Bereavement Leave.

#### *VII-L. Personal Leave with Pay*

Considering valid reasons, the length of service with the District, employee performance and the impact to work, the General Manager may authorize an employee to use leave with pay.

Requests for leave with pay must be presented to the General Manager in writing not less than five (5) working days prior to the time off requested except under legitimate, unforeseen circumstances.

The written request must include the employee's intention to return to work. If an employee fails to return after his or her period of authorized paid leave, the employee will not be reinstated following the stipulations contained in Section VIII-B, "Job Abandonment."

#### *VII-M. Other Leaves with Pay*

1. Organ Donation or Bone Marrow Transplant  
Consistent with the provisions of Labor Code Sections 1508-1513, the District will grant paid time off for organ donation and bone marrow transplants.

#### *VII-N. Family Care and Medical Leave Policy*

To the extent not already provided under current leave policies and provisions, the District will provide family and medical care leave for eligible employees as required by state and federal law. Leave under this policy is unpaid. The following provisions set forth certain rights and obligations with respect to such leave. The rights and regulations for taking family care and medical leave are pursuant to the regulations of the California Family Rights Act ("CFRA") and Federal Family and Medical Leave Act ("FMLA"). Unless otherwise provided by law, the District will run each employee's CFRA and FMLA leaves concurrently.

## 1. Reasons for Leave

Leave is only permitted for the following reasons:

- a. The birth of a child or to care for a newborn of an employee;
- b. The placement of a child with an employee in connection with the adoption or foster care of a child;
- c. Leave to care for a child, parent, or spouse who has a serious health condition (Under the CFRA, “child” means a child, including a child who is 18 years of age or older who is capable of self-care);
- d. Under the CFRA only, leave is permitted to care for a domestic partner, grandparent, grandchild, or sibling who has a serious health condition. Leave for this purpose does not apply to FMLA leave and will not run concurrently with leave under the FMLA;
- e. Leave because of a serious health condition that makes the employee unable to perform any one or more essential functions of his/her position;
- f. 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;
- g. Under the CFRA only, leave for a variety of “qualifying exigencies” arising out of the fact that an employee’s domestic partner is on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation. Leave for this purpose does not apply to FMLA leave and will not run concurrently with leave under the FMLA; or
- h. 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.

## 2. Employees Eligible for Leave

An employee is eligible for leave if the employee:

- Has been employed for at least 12 months; and
- Has been employed for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave; and
- For FMLA leave, the District directly employs at least 50 full or part-time employees within a 75-mile radius for each working day during each 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. This criteria is not required and does not apply in order for an employee to be eligible for CFRA leave.
- Is disabled by reason of pregnancy (i.e. no minimum eligibility period for pregnancy disability leave)

## 3. 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.

Pregnancy disability leave may be run concurrently with [the employee’s 12 weeks of family leave under the FMLA](#).

## 4. Substitution of Paid Accrued Leaves

Although family and medical care leave is unpaid, an employee may elect and the District may require an employee to concurrently use all paid accrued leaves during family and care leave as permitted by state and federal laws.



5. Minimum Duration of Leave

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 at least one day, but less than two weeks duration on any two occasions.

If leave is requested to care for a child, parent, spouse, domestic partner, grandparent, grandchild, sibling or the employee him/herself with a serious health condition, the minimum amount of leave that must be taken is one day. The notice and medical certification provisions of this policy must be complied with.

6. Spouses Both Employed by the District

If both parents of a child, adoptee, or foster child are employed by the District and are entitled to bonding leave:

1. The aggregate number of workweeks of FMLA leave to which both may be entitled may be limited to 12 workweeks during any 12-month period; and
2. Each parent is entitled to take 12 workweeks of CFRA leave during any 12-month period.

If both parents of a covered service member are employed by the District and are entitled to leave to care for a covered service member, 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.

7. Employees Benefits While on Leave

While on unpaid leave, employees will continue to be covered by the District's group health insurance to the same extent that coverage is provided while on the job.

If the employee fails to return to work after the entitlement period has been exhausted or expires, the District will no longer pay for group health insurance. The employee may continue group health insurance in accordance with section VII-B "Post-Termination Insurance Benefits (COBRA)."

8. Medical Certification

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

*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. 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.

*Family Member Serious Health Condition:* Employees who request leave to care for a child, parent, domestic partner, spouse, grandparent, grandchild or sibling 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, spouse, grandparent, grandchild or sibling 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, spouse, domestic partner, grandchild, grandparent or sibling. 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. 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.

*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. The District will verify the certification as permitted by the FMLA regulations.

*Qualifying Exigency:* The first time an employee requests leave because of a qualifying exigency, an employer 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 the District 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. The District will verify the certification as permitted by the FMLA and CFRA regulations.

9. 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 the District within the time frame requested by the District (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.

10. Consequences of Failure to Provide a Timely or Adequate Medical Certification

If an employee provides an incomplete medical certification, the employee will be given a reasonable opportunity to cure any such deficiency. However, if an employee fails to provide a medical certification within the time frame established in this Policy, the District 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.

11. Intermittent Leave or Leave on a Reduced 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 a 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. The District 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.

12. Employee Notice of Leave

Although the District 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. 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. 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.

13. 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.
- 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 the District, the employee will be reinstated within two business days, where feasible, after the employee notifies the employer of his/her readiness to return.
- c. **Employee's Obligation to Periodically Report on Their 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.
- 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.
- e. **Reinstatement of "Key Employees":** Under the FMLA only, the District may deny reinstatement to a "key" employee (i.e., an employee who is among the highest paid 10 percent of all employed by the District within 75 miles of the worksite) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the District, and the employee is notified of the District's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur. Under the CFRA, the District may not deny reinstatement to a "key" employee during or upon the expiration of CFRA leave.

*VII-O. Pregnancy Disability Leave*

The District shall administer Pregnancy Disability Leave and Pregnancy Accommodation in accordance with the law. 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). 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. An employee who works less than 40 hours per week will receive a pro rata or proportional amount of leave.

Upon the expiration of approved Pregnancy Disability Leave, the employee shall be reinstated to her former position or to a comparable open position if the employee's original position is abolished during the period of leave and the employee would have otherwise not been laid off. For employees being reinstated, the General Manager may require a statement from the attending physician that the employee is able to perform the essential functions of her job. If upon return from leave an employee is unable to perform the essential functions of her job because of a physical or mental

disability, the District will initiate an interactive process with the employee in order to identify a potential reasonable accommodation in accordance with these Policies.

Failure to return to work after the authorized pregnancy disability leave results in the employee having no reinstatement rights.

Employees requesting Pregnancy Disability Leave should give reasonable advanced notice of the medical need for leave, date the leave shall commence and the estimated duration of the leave.

#### *VII-P. American with Disability Act (ADA) Leave/Reasonable Accommodation*

In the event an employee develops a disability within the meaning of the ADA and/or applicable California state disability laws and the District is reasonably able to accommodate the limits or restrictions on that employee's ability to work without undue hardship to the District by extending an unpaid leave, the District will do so. In any such cases, the employee must be otherwise qualified to perform the duties of any job that may be made available. In order to determine whether or not the employee's restrictions and/or limitations can reasonably be accommodated, the District will engage in a good faith and timely interactive process. In all such cases, the District will comply with the Americans with Disabilities Act and parallel California laws.

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

1. Qualified individuals with disabilities, both applicants and employees, to enable them to perform essential job functions; and
2. 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; and
3. Employee victims of domestic violence, sexual assault, or stalking to promote the safety of the employee victim while at work; and
4. Employees who request reasonable accommodation to address a conflict between religious belief or observance and any employment requirement.

If the disability or the need for reasonable accommodation is not obvious, the District 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.

#### *VII-Q. Personal Leave without Pay*

Considering valid reasons, the length of service with the District, employee performance and the impact to work, the General Manager, where otherwise not obligated by State and Federal law, may authorize a District Regular Full-Time and Regular Part-Time employee to use leave without pay for the following reasons:

- Continuance of education or training of benefit to the District.
- Public Service
- Extended illness or disability

The employee must submit a written request for Leave without Pay to the General Manager. The written request must include the reason, the duration and the employee's expected return to work date.

A Personal Leave Without Pay leave of absence without pay shall not exceed one (1) year, unless otherwise obligated by State or Federal law.

All benefits shall be suspended for the duration of the Leave without Pay, unless otherwise obligated by State or Federal law.

Dental and Health insurance may be continued if the employee pays for 100% of the District's and the employee's premiums plus a 2% administrative fee.

There is no guarantee of reinstatement at the conclusion of unpaid leave.

If an employee fails to return after his or her period of authorized un-paid leave, the employee will not be reinstated.

#### *VII-R. Military Leave*

Military Leave shall be granted in accordance with the requirements of State and Federal law. An employee requesting leave for this purpose shall promptly provide to the General Manager a copy of the military orders specifying the dates, sites and purposes of the activity or mission.

Within the limits of such orders, the General Manager may determine when the leave is to be taken and may modify the employee's work schedule to accommodate the request for leave. A copy of USERRA will be given to each employee upon hire.

The Board of Commissioners may by resolution supplement military pay and benefits for employees called to Active Military Duty.

#### *VII-S. Emergency Duty*

Time off to perform emergency duty as a volunteer firefighter, reserve police officer or emergency rescue person unless doing so would hinder the availability of emergency services provided by the District.

#### *VII-T. Legal Witness*

Time off to serve as a witness in legal proceedings.

Any employee, who is subpoenaed to appear in court in a matter regarding an event or transaction in the course of his or her job duties, must give his or her supervisor as much advance notice as is possible. The District will determine whether the matter involves an event or transaction in the course of the employee's District's 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. The District will offset the amount from pay the employee receives for witness fees.

Any 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.

#### *VII-U. Assist Victim of Domestic Violence*

Time off to seek relief to help ensure the health, safety, or welfare of a domestic violence victim or the child of such victim. The leave is unpaid unless the employee elects to use 2014 Healthy Workplaces sick leave, accrued vacation or compensatory time off.

#### *VII-V. Requested School Activity*

Time off to appear in an employee's child's school pursuant to the request of the school and/or to attend school or day care related activities. 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 leave or compensatory time off.

*VII-W. Victim of Crime*

Time off related to one's status as a victim of crime, such as time off for victims of sexual assault, domestic or serious violent felonies.

*VII-X. Attend Drug or Alcohol Rehabilitation Program*

Time off related to participation in an alcohol or drug rehabilitation program.

*VII-Y. Reimbursement of Expenses*

Employees shall be reimbursed for reasonable out of pocket expenses incurred while on specifically authorized District business pursuant to the Ventura Port District Expense Reimbursement Policy. Automobile mileage for privately owned vehicles shall be reimbursed at the current Internal Revenue Service approved rate except as otherwise stipulated by the Board.

*VII-Z. Optional Benefit Plan*

The District may provide an Optional Benefit Plan for Regular and Probationary employees. Such a program may be established by the Board and may provide certain funds for reimbursement of various personal and professional expenses incurred by the employee. A copy of the plan may be obtained from the Accounting Department.

*VII-AA. Full-Time Employee Incentive Pay Programs*

1. Educational Incentive Pay Program:

- \$25 per pay period for full-time employees who currently possess an Associate's Degree or who obtain an Associate's degree while employed with the District. The annual on-going benefit is \$650. Employees will provide degree documentation to Accounting.
- \$50 per pay period for full-time employees who currently possess a Bachelor's Degree or who obtain a Bachelor's Degree while employed with the District. Annual on-going benefit \$1,300. Employees will provide degree documentation to Accounting.
- \$75 per pay period for full-time employees who currently possess a Master's Degree or who obtain a Master's Degree while employed with the District. Annual on-going benefit \$1,950. Employees will provide degree documentation to Accounting.

2. Bilingual Incentive Pay Program:

- \$25 per pay period for those full-time employees who test as basic/semi-fluent in reading and writing or listening and speaking at an English/Spanish level through a District designated testing program. The District will cover the cost of this testing once per year for each interested full-time employee. Participants of this incentive will be expected to provide translation services as part of their ongoing work duties. The annual benefit is \$650.
- \$50 per pay period for those full-time employees who test as basic/semi-fluent in reading and writing and listening and speaking at an English/Spanish level through

a District designated testing program. The District will cover the cost of this testing once per year for each interested full-time employee. Participants of this incentive will be expected to provide translation services as part of their ongoing work duties. The annual benefit is \$1,300.

- \$75 per pay period for those full-time employees who test as fluent in reading and writing and listening and speaking at an English/Spanish level through a District designated testing program. The District will cover the cost of this testing once per year for each interested full-time employee. Participants of this incentive will be expected to provide translation services as part of their ongoing work duties. The annual benefit is \$1,950.

### **VIII. TRANSITION WORK ASSIGNMENT PROGRAM**

The Transition Work Assignment Program (TWA) enables employees who are physically unable to perform their usual jobs to fill other important roles at the Port District. The program helps employees earn their salary while recovering from injuries or serious medical conditions and at the same time benefits the Port District by allowing the Port District to utilize its workforce efficiently and effectively.

#### *VIII-A. Employees Eligible to Participate*

Participation is available for all Port employees who:

- Have a serious medical condition or injury, whether occupational or not.
- Can be expected to return to their usual and customary duties in a time period that does not impose an undue hardship on the Port District.
- Have medically-based temporary work restrictions from an authorized medical provider.
- Have reached Permanent and Stationary/Maximum Medical Improvement status and clarification of permanent restriction is still pending.

#### *VIII-B. Employees Not Eligible to Participate*

The Transition Work Assignment Program does not apply to employee who:

- Have reached Permanent and Stationary/Maximum Medical Improvement status and/or have permanent work restrictions. In such cases reasonable accommodations will be considered.
- Have been unable to demonstrate adequate progress toward performing usual and customary duties. In such cases, reasonable accommodations will be considered.

#### *VIII-C. Employee Participation*

Employees participating in the Transitional Return to Work Program:

- Will meet with the supervisor who will explain the program, their responsibilities and help monitor progress toward recovery.
- Will be assigned transitional work that can be performed safely and in compliance with the restrictions assigned by the doctor.

Transitional work assignments are not the employee's regular duties, they are temporary assignments or modifications to regular duties and generally limited to not more than 90 days. Extensions of the 90-day limit will be considered in cases where it appears that the extension would be consistent with the goals of the program. (For example, where the employee cannot get treatment within the 90-day time frame, but it does appear that they have a treatable condition and will be able to return to their usual and customary duties within a reasonable time frame). If the District is unable to continue the transitional work assignment for the employee after 90 days, then the District will engage in the interactive process with the employee to consider any other reasonable accommodations.

Transitional work assignments are varied so employees with a wide variety of physical restrictions can participate.

Ideally, transitional work assignment will become more physically demanding as the employee's medical status improves.

Within the limits noted by the employee's physician, employees will be assigned to work as closely as possible to their normal schedule.

Employees may be assigned to a temporary supervisor while in the program; however, their regular supervisor will also follow their progress.

Employees will be expected to report on time to their assigned work location and to follow applicable time and attendance procedures.

Employees in the TWA will be paid their usual rate of pay but will generally not be eligible for overtime.

All applicable Port District policies and procedure apply to employees in a TWA.

Collective bargaining agreements remain in effect during a TWA.

#### *VIII-D. Employee Responsibilities*

Employees participating in the TWA are responsible to:

- Perform transitional work tasks as assigned
- Notify transitional and regular supervisor of any change in address/phone number.
- Attend all medical appointment necessary to assist in recovery.
- Keep the treating physician informed of task assignments and progress in returning to the employee's usual and customary job.
- Work within the restrictions set by the employees treating physician. If the employee believes he/she cannot perform the tasks assigned, immediately notify the transitional supervisor.
- Report workplace injuries to their designated supervisor as soon as possible in accordance with established procedures.
- Keep required licenses, etc. up-to-date for return to their usual and customary job.



## **IX. SEPARATIONS FROM SERVICE**

Employees may be separated from service through voluntary resignation, job abandonment, dismissal or layoff.

### *IX-A. Voluntary Resignation*

An employee wishing to resign from the District in good standing shall submit a written letter of resignation as soon as possible before the effective date of resignation. A resignation becomes final when accepted in writing by the General Manager. Once the General Manager has accepted a resignation in writing, it is final and cannot be withdrawn. If the employee fails to give reasonable notice in light of the circumstances surrounding the resignation and the nature of employee's position, that failure may be cause for denying future employment with the District.

### *IX-B. Job Abandonment*

An employee is considered to have resigned from his/her position if the employee is absent for five (5) consecutive workdays without prior authorization and without notification during the period of absence. No later than the third working day of unauthorized absence, the supervisor shall contact the employee by telephone or other means if possible or by overnight letter to the employee's last known address informing the employee that if the employee fails to report to work within two (2) workdays, or receive authorization for such absence, the employee will be deemed to have resigned. Employees separated from employment for job abandonment will be reinstated with such charge removed from the employee's record upon presentation of justification for absence such as severe accident, severe illness, arrest/detention, or mental or physical impairment that prevented notification. Employees have no right to a post-separation appeal if deemed to have resigned as a result of job abandonment.

### *IX-C. Dismissal*

All District employees not employed on an at-will basis that are to be dismissed are entitled to the rights and procedures set forth in Section X-C, "Disciplinary Appeal Procedure."

All other employees may be dismissed at will, with or without cause, and do not have any of the rights set forth in Section IX-C, "Disciplinary Appeal Procedure."

### *IX-D. Layoff*

Whenever in the judgment of the Board, a reduction in personnel is necessary because of lack of work, lack of funds, or whenever advisable in the interests of economy, an employee may be laid off or demoted for non-disciplinary reasons.

#### 1. Notice of Layoff

Employees to be laid off shall be given, whenever possible, at least twenty-one (21) calendar days prior notice. The written notice of layoff shall include: (a) the reason(s) for the layoff, (b) the fact that the employee may have rights to accept demotion in lieu of layoff; (c) the effective date of the layoff, (d) the seniority considerations taken into account concerning those to be laid off, and (e) information regarding the likelihood of possible reinstatement.

#### 2. Layoff by Seniority

Employees shall be laid off in the inverse order of their seniority in their classification. Seniority shall be determined based upon the length of employment in the affected classification or promotion to the classification and higher classifications. A lay off out of the inverse order of Seniority may be made if, in the General Manager's sole judgment, retention of special job skills is required. In cases where there are two or more employees in the classification from which the layoff is to be made who have the same seniority date, the selection of the employees to be laid off will be decided by lottery.

3. Demotion in Lieu of Layoff and Displacement

The General Manager may choose to demote employees in lieu of layoff when possible and under the appropriate circumstances. Employees in lower positions may be subject to displacement by demoted senior employees in the event of layoff. Employees in lower positions will be displaced in inverse order of their length of employment in the position.

4. Appeals Procedure for Layoffs

Employees may appeal to the Board in writing within thirty (30) days after receiving notice of layoff on the ground that the required procedure had not been complied with, that the layoff was made in pretextual and/or discriminatory manner or was otherwise improper. Within thirty (30) days after such written appeal is filed, the Board or a committee of the Board may hold such hearing or investigation as it deems necessary. The Board's decision is final.

5. Re-Employment Rights for Laid-off Employees

Regular Full-Time and Regular Part-Time employees, who have received a satisfactory or better evaluation for the 12 months prior to lay off, have completed their probationary period and who have been laid off, shall be automatically placed on a re-employment list for one (1) year for the classification from which they were laid off. The employee may be rehired should the position be reinstated within one (1) year of the effective date of the layoff or a new position be created within one (1) year which requires substantially the same duties.

*IX-E. Reinstatement*

A regular employee who has resigned, or has otherwise separated while in good standing, may be considered for reinstatement, upon recommendation of the General Manager, to a position in the former employee's classification for a period of one year after resignation or separation. The employee shall be reinstated to the salary range or step held at the time of resignation or separation and shall receive a new anniversary date that shall be the first date of employment upon reinstatement. The employee will serve a new probationary period.

*IX-F. Re-Employment*

The names of regular employees who have been laid off shall be placed on a re-employment list in the order of their seniority in the classification from highest to lowest. The names of these employees shall remain on this list for a period of one year unless such person is re-employed sooner. The employee must be declared "fit for duty" by a physician of the District's choosing before being considered for re-employment.

As a vacancy within the classification becomes available, the name appearing at the top of the list shall be selected to fill the vacancy.

An employee, who is selected from the list to fill the vacancy and refuses the assignment, shall be taken off the list and will not be considered further for re-employment.

Employees who are demoted as a result of a layoff shall have their names placed on a classification re-employment list in order of their classification seniority. Vacant positions within a classification series shall be first offered to employees on this list.

*IX-G. Payments Upon Termination of Employment*

Upon termination of employment, and after the employee has returned all property belonging to or issued by the District, the employee shall receive termination pay as follows:

1. Any unused sick leave, up to 720 hours, will be paid at the following rate:
  - 0 through 5 years of service - 12.5%
  - 6 through 10 years of service - 25%
  - After 10 years of service - 37.5%
2. Unused compensatory time, up to 40 hours, will be paid at 100% at the employee's regular rate of pay.
3. Unused vacation time, up to 250 hours, will be paid at 100% at the employee's current base hourly rate.
4. Severance pay when specifically authorized by the Board.

## **X. DISCIPLINARY ACTION**

### *X-A. Grounds for Discipline*

Grounds for Discipline include, but are not limited to the following:

1. Fraud in securing employment or making false statement on an application for employment.
2. Incompetence.
3. Unsatisfactory performance, i.e., inability to comply with the minimum standard of an employee's position for a significant period of time.
3. Inefficiency or inexcusable neglect of duty, i.e., failure to perform duties required of an employee within his/her position.
4. Disobedience: The willful failure to comply with the legal and appropriate orders or directions of a person in a supervisory position.
5. Insubordination or insulting or demeaning the authority of a supervisor or manager.
6. Dishonesty involving employment.
7. Being under the influence of or in possession of alcohol or illegal drugs or narcotics while on duty, being impaired by alcohol or illegal drugs while on duty which could impact the employee's ability to do his or her job. The provisions of section XIII – Drug Free Workplace will be followed prior to possible termination.
8. Lack of self-restraint.
9. Absence without authorized leave or unexcused tardiness
10. Excessive absenteeism or inexcusable absence without leave.
11. Abuse of sick leave, i.e., taking sick leave without a doctor's certificate when one is required, or misuse of sick leave.
12. The conviction of either a misdemeanor involving moral turpitude, or a felony shall constitute grounds for dismissal of any employee. The record of conviction shall be conclusive evidence of the fact that the conviction occurred. The General Manager may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline. A plea or verdict of guilty, or a conviction showing a plea of nolo contendere is deemed to be a conviction within the meaning of this Section.
13. A D.U.I. conviction shall be handled in accordance with the District's Drug-Free Workplace Policy but may be grounds for dismissal if the employee's position requires the operation of District vehicles and the employee is deemed to be "uninsurable" by the District's insurance carrier.
14. Failure to observe safety precautions.
15. Activity, which has as its goal the overthrow of government.
16. Improper or unauthorized use of District property.
17. Misuse of District property.
18. Inattention to duty or negligence in the care and handling of District property.
19. Any willful act or conduct undertaken in bad faith, either during or outside of the duty hours, which is of such a nature that it causes discredit to the District or the employee's Department.
20. Unlawful discrimination or harassment on the basis of race, religious creed, color, national origin, medical condition, ancestry, physical handicap, marital status, actual or perceived sexual orientation, gender, age, or any other protected classification against the public or other employees, while acting in the capacity of a District employee.
21. Retaliation against any other employee or member of the public who in good faith reports, discloses, divulges, or otherwise notifies an appropriate authority regarding a suspected violation of any law which occurs on the job or is directly related to employment with the District.
22. Engaging in any of the drug related conduct forbidden pursuant to Section XIII, "Drug-Free Workplace" of this Manual.
23. Refusal to subscribe to any order or affirmation, which is required by law in connection with District employment.
24. Violation of the rules and regulations enacted or prescribed by the District, Department or Section.

25. Outside employment not specifically authorized by the General Manager.
26. Acceptance from any source of a reward, gift, or other form of remuneration in addition to regular compensation of an employee for the performance of his or her official duties.
27. Willful violation of any of the provisions of the ordinances, resolutions or any rules, regulations or policies, which may be prescribed by the District.
28. Improper political activity on duty. Example: Those campaigning for or espousing the election or non-election of any candidate in national, state, county, or municipal elections while on duty and/or during working hours or in a District uniform on or off duty; or the dissemination of political material of any kind while on duty and/or during working hours or in uniform.
29. Working overtime without authorization.
30. Possession of a gun, rifle, crossbow, or other dangerous weapons while on duty and/or on District property when not required by job duties.
31. Making false or malicious statements concerning any employee, the District or the District's policies or practices.
32. Sexual Harassment or other Harassment or Discrimination based on a Protected Classification.
33. Bullying/Abusive Conduct: Aggressive behavior which is intended to physically or psychologically harm or intimidate another person.

*X-B. Procedures for Taking Disciplinary Action*

The following discipline procedures only apply to District employees not employed on an at-will basis. All District employees are employed on an at-will basis unless otherwise expressly provided for in an applicable collective bargaining agreement, employment contract, the District Commission's governing statutes, or another part of these rules. All District employees employed on an at-will basis 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 for three days or more, demotion, reduction in pay, or dismissal.

1. "Business Day"  
A "Business Day" is any day the District is open to the public, i.e. any day except Saturdays, Sundays and legal holidays recognized by the District.
2. "Skelly" Notice of Intended Disciplinary Action  
Whenever the appropriate authority intends to suspend an employee for three (3) days or more, demote the employee, reduce the employee in pay or dismiss the employee, the appropriate authority or his designee shall give the employee a written notice of discipline which sets forth the following:
  - a. The level of disciplinary action intended;
  - b. The specific charges upon which the intended discipline is based;
  - c. A summary of the facts upon which the charges are based;
  - d. A copy of all written materials, reports, or documents upon which the intended discipline is based;
  - e. Notice of the employee's right to respond to the General Manager or his designee regarding the intended discipline within fifteen (15) business days from the date of the notice, either by requesting a *Skelly* conference, or by providing a written response, or both;
  - f. Notice that failure to respond at the time specified shall constitute a waiver of the right to respond prior to final discipline being imposed; and
  - g. Notice of the employee's right to have representative of his or her choice at the *Skelly* conference.

The General Manager or his or her designee has the authority to place an employee on paid administrative leave during the District's investigatory process and up to imposition of

discipline. Placement on paid administrative leave is not a disciplinary action. While on paid administrative leave an employee will continue to receive pay and benefits.

3. Response by Employee and *Skelly* Conference

After receiving the affected employee's response to the Notice of Intended Disciplinary Action, the General Manager 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 General Manager or designee 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.

4. Final Notice of Disciplinary Action

After the *Skelly* conference and or timely receipt and consideration of the employee's written response, or the expiration of the employee's time to respond to the notice of intent, the General Manager or designee shall:

- a. Dismiss the notice of intent and take no disciplinary action against the employee; or
- b. Modify the intended disciplinary action; or
- c. Prepare and serve upon the employee a final written notice of disciplinary action.

The final notice of disciplinary action shall include the following:

- a. The level of disciplinary action taken;
- b. The effective date of the disciplinary action taken;
- c. Specific charges upon which the discipline is based;
- d. A summary of the facts upon which the charges are based;
- e. A copy of all written materials, reports and documents upon which the disciplinary action is based; and
- f. A reference to the employee's appeal right.

*X-C. Disciplinary Appeal Procedures*

District employees subject to disciplinary action have certain rights of appeal within the Ventura Port District. These appeal rights are in addition to any other rights that may be provided by statute or other law.

1. Peace Officers Bill of Rights

The current Peace Officers Bill of Rights is applicable to any District employee who is designated as a Peace Officer.

2. Request for Appeal Hearing before a Subcommittee of the Board

After receiving the final decision of the General Manager or designee, the employee may submit a written request for an appeal hearing before a subcommittee of the Board within fourteen business (14) days from receipt of the final notice of discipline. Failure to file a timely written request for an appeal waives the right to an appeal hearing and any appeal of the discipline. The subcommittee of the Board must grant the affected employee a hearing in a contested disciplinary action. Hearings may be held by the subcommittee of the Board or by any authorized representatives. The subcommittee or any authorized representative shall render a final written decision, which in its judgment is just and proper.

3. Conduct of Hearing

At the hearing before the subcommittee of the Board or authorized representatives, both the District and the employee shall be entitled to present evidence tending to support their position. That evidence may be in the form of documentary evidence, or the testimony of witnesses, under oath, be that testimony either live or by affidavit. Both the District and affected employee shall have the right to have legal representation at the hearing.

## **XI. GRIEVANCE PROCEDURES**

If a represented employee group has negotiated a Memorandum of Understanding or Collective Bargaining Agreement with grievance procedures included, those grievance procedures will take precedence over these procedures for the employees covered by that MOU or CBA.

### *XI-A. Definition of Terms*

A "grievance" is a written allegation by an employee, submitted as specified in these policies, claiming an alleged violation(s) of a specific provision of the Human Resources Manual, MOU, CBA or other District policy. In most cases, an employee must exhaust the internal remedies before seeking other methods of review that might be provided by law. A grievance does not apply to the following:

- To appeal any action taken per Section X-C, Disciplinary Appeal Procedure;
- For resolution of complaints;
- To grieve items identified in section II as "Management Rights";
- In cases of oral reprimand;
- To challenge job assignments;
- To challenge promotional examinations or appointments.

A "Business Day" is any day the District is open to the public, i.e. any day except Saturdays, Sundays and legal holidays recognized by the District.

### *XI-B. Grievance Process*

#### 1. Filing a Grievance

Within ten (10) business days of the date the employee knew or should have known of the incident giving rise to the grievance, the employee must file a formal written grievance with his or her supervisor or with the General Manager if appropriate. This time limit shall be strictly adhered to. Any grievance filed more than ten business days from the date the employee knew or should have known of the act or omission giving rise to the incident shall be rejected and will not be processed further. The parties may extend time limits by mutual consent.

In filing a grievance, the employee must state each of the following:

- The specific section of the Human Resource Manual, MOU, CBA or other District policy allegedly violated, misinterpreted or misapplied;
- The specific facts regarding how the alleged violation, misinterpretation or misapplication occurred;
- The date or dates on which the alleged violation, misinterpretation or misapplication occurred;
- What documents, witnesses or other evidence support the employee's position;
- The remedy requested;
- The identity of the individual representing the employee, if employee is not representing himself or herself.

While a formal grievance is pending, the employee is expected to continue to perform job functions and conduct himself or herself in a manner so as not to disrupt the conduct of business within the District, and, if at all possible, not to let the existence of the grievance interfere with productivity.

#### 2. The Grievance Steps

**Step 1 Resolution with Supervisor:** The immediate supervisor shall meet and review the grievance with the employee and respond to the employee in writing within five (5) business days from the date of the meeting.

**Step II General Manager:** If the employee believes that the grievance has not been resolved through Step I, the employee may appeal to the General Manager. The General

Manager shall meet and review the grievance appeal with the employee and respond in writing to the employee within thirty (30) days from the date of the meeting.

If the Grievance involves the General Manager, the Board of Port Commissioners shall appoint a sub-committee to meet and review the grievance with the employee and respond in writing to the employee within thirty (30) days from the date of the meeting.

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.

3. Limitations on the Decisions of Those Hearing Employee Grievances

Those designated to hear employee grievances shall neither add to, detract from, nor modify the language of the District rules or policies in considering the issues brought to them.

The written response shall be confined to the precise issues raised and submitted by the grievant.

Any monetary award granted to the grievant is limited to lost wages or benefits measured from the date of the grievance forward. No other monetary award shall be granted.



## **XII. POLICY AGAINST DISCRIMINATION, HARASSMENT AND RETALIATION**

The Ventura Port District has a strong commitment to prohibiting and preventing discrimination, harassment, and retaliation in the workplace. This Policy establishes a complaint procedure for investigating and resolving internal complaints of discrimination, harassment, and retaliation. The District encourages all covered individuals to report any conduct they believe violates this Policy as soon as possible. Retaliation against any individual for making a complaint, or for participating in a discrimination or harassment investigation, is also improper and constitutes a violation of the policy. Any discrimination, harassment or retaliation which violates this policy will not be tolerated.

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, training opportunities and compensation.

Employees who violate this policy may be subject to disciplinary action up to and including termination.

### *XII-A. Definitions*

#### 1. Protected Classification

This policy prohibits harassment, discrimination, or retaliation because of an individual's protected classification. "Protected Classification" includes race, religious creed, color, gender, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, age (40 and over), sexual orientation, gender expression, gender identity, or military or veteran status, or any other basis protected by law. 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. Protected Activity

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

#### 3. Harassment

Harassment can consist of virtually any form or combination of verbal, physical, visual, or environmental conduct. It need not be explicit or even specifically directed at the victim. Sexually harassing conduct can occur between people of the same or different genders.

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

- a. Verbal: Inappropriate or offensive remarks, slurs, jokes, or innuendoes based on actual or perceived race, gender, religious creed, national origin, ancestry, disability, medical condition, marital status, age, sexual orientation, gender identity, genetic information or any other basis protected by Federal, State or local law. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status, pregnancy, sexual orientation, unwelcome flirting or propositioning; demands for sexual favor; verbal abuse, threats or intimidation, or patronizing or ridiculing statements that convey derogatory attitudes about a particular person in a protected category.
- b. Physical: Inappropriate or offensive touching, assault, impeding or blocking movement, or physical interference with free movement. This may include, but is not limited to, kissing, patting, lingering or intimate touches, grabbing, massaging, pinching, leering,

staring, unnecessarily brushing against or blocking another person, whistling or sexual gestures.

- c. Visual or Written: The display or circulation of offensive or derogatory visual or written material related to race, sex, religious creed, national origin, ancestry, disability, medical condition, marital status, age, gender identity, genetic information, sexual orientation, or any other basis protected by Federal or State law. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, e-mail, computer graphics or electronic media transmission.
- d. Environmental: A work environment that is permeated with sexually oriented talk, innuendo, insults, or abuse. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements. An environment may be hostile if unwelcome sexual behavior is directed specifically at an individual or if the individual merely witnesses unlawful harassment in his or her immediate surroundings. The determination of whether an environment is hostile is based on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening, and whether the conduct unreasonably interferes with an individual's work. A hostile work environment may also be created by the above-described behavior directed toward employees in other categories protected by state and federal non-discrimination laws. As with sexual harassment, these type of harassing behaviors are prohibited.

Romantic or sexual relationships between supervisors and subordinate employees are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. The relationship may create an appearance of impropriety and lead to charges of favoritism by other employees. A welcomed sexual relationship may change with the result that sexual conduct that was once welcomed becomes unwelcome and harassing.

Harassment, sexual or otherwise, is not within the course and scope of an individual's employment with the District.

#### 4. 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.

#### 5. 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.

#### *XII-B. Prohibited Supervisory or Managerial Behavior*

No supervisor, manager, or other authority figure may condition any employment, employee benefit or continued employment in the Ventura Port District on the applicant or employee's acquiescence to any of the behavior defined above.

No supervisor, manager, or other authority figure may retaliate against any applicant or employee, because that person has opposed a practice prohibited by this policy or has filed a complaint,

testified, assisted or participated in any manner in an investigation, proceeding or hearing conducted by an authorized investigator.

*VII-C. Behavior Prohibited by All Persons*

No supervisor, manager or any other District employee shall create a hostile or offensive work environment for any other person by engaging in any discriminatory or harassing behavior or by tolerating it on the part of any employee of the District.

No person in the District may retaliate against any employee because that person has opposed a practice prohibited by this policy or has filed a complaint, testified, assisted or participated in any manner in an investigation proceeding or hearing conducted by an authorized investigator.

No person shall destroy evidence relevant to an investigation of discriminatory harassment.

*XII-D. Obligations of Supervisors/Managers*

Supervisors and Manager shall take 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.

Supervisors and Managers shall receive complaints in a fair and serious manner, and documenting steps taken to resolve complaints and follow up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.

A copy of this policy shall be provided to all employees of the District, as well as displayed in prominent locations throughout the District.

A copy of the information sheet on sexual harassment prepared by the Department of Fair Employment and Housing is available to all District employees upon request.

The District shall periodically notify employees of the procedures for registering a complaint as well as available redress. Such notification shall occur through the normal channels of communication.

The District shall make available upon request information from the Department of Fair Employment and Housing and the Equal Employment Opportunity Commission on the procedures for filing claims of sexual harassment with these entities.

A copy of this Discrimination and Harassment Policy shall appear in any District publication that sets forth the comprehensive rules, regulations, procedures and standards of conduct for employees.

Employees of the District shall receive periodic training on this policy.

*XII-E. Complaint Procedure for Discrimination or Harassment*

1. Obligations of All Employees

All employees of the District should immediately report any conduct that they believe violates the District's discrimination, harassment or retaliation policies based on actual or perceived race, religious creed, gender, national origin, ancestry, disability, medical condition, marital status, age, sexual orientation, gender expression, gender identification or any other protected classification. This includes conduct they personally experience or directly observe, whether or not the employee who is the object of the conduct reports the

conduct. This also includes conduct by non-employees, such as tenants, contractors, the Board of Port Commissioners, sales representatives or vendors.<sup>1</sup>

Employees should immediately report the conduct to their supervisor, manager, any other manager or the General Manager. Under no circumstances shall employees of the Ventura Port District who believe they have been the victims of discrimination, harassment or retaliation be required to first report that harassment to a supervisor or other authority figures if that person or authority figure is the individual who has done the harassing. These employees should instead report the conduct to any supervisor, manager, department head or the General Manager. If the subject of the discrimination, harassment or retaliation is the General Manager, the employee should bring the conduct to the attention of any Board member who shall forward the information to the Chair of the Board.

All employees must cooperate with any investigation of any alleged act of discriminatory harassment conducted by the District or its agents.

2. Responsibilities of Supervisors or Management

Any supervisor, manager or Department Head who receives a complaint regarding discrimination, harassment or retaliation shall immediately report it to the General Manager or a Board Member if appropriate.

Under no circumstance shall a supervisor, manager Department Head or other authority figure retaliate in any way against an employee who has made a complaint or who has provided information as a witness to an incident of alleged discrimination or harassment.

All supervisors and managers are required to maintain confidentiality to the extent possible in communicating or investigating any claim of alleged discrimination or harassment.

*XII-F. Investigation/Corrective Action*

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 General Manager. Upon receiving notification of a harassment complaint, the General Manager will authorize an investigation or conduct an investigation of the complaint. The investigation will be conducted in a manner that ensures, to the extent feasible, the privacy of the parties involved.

The person designated to investigate shall immediately report in writing the findings of fact to the General Manager. The General Manager will determine whether the policy has been violated and communicate the conclusion to the complainant.

Disciplinary action shall be decided in accordance with the Ventura Port District policy and after consultation with the General Manager.

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<sup>1</sup> The District's employees must understand that the District cannot prevent members of the General Public from exercising their First Amendment Rights to Free Speech, which includes the right to swear and be disrespectful.

### **XIII. EMPLOYEE CONDUCT AND RESPONSIBILITIES**

#### *XIII-A. Conduct*

District employees are expected to conduct themselves at all times in a manner which will reflect favorably on the District and which engenders the respect of the public.

Employee conduct includes their actions as well as any form of communication, including but not limited to verbal, electronic, and social media.

#### *XIII-B. Job Responsibilities*

Employees are expected to be prompt in reporting to work and are further expected to carry out their job duties conscientiously until the end of their shift. As an integral member of the District, every employee should actively seek out ways to improve their job performance, as well as to improve the overall efficiency and effectiveness of the District.

#### *XIII-C. Care of Equipment*

District employees must respect District equipment and guard against misuse, abuse, and waste of District supplies, equipment, and other property.

#### *XIII-D. Use of District Equipment Prohibited*

Personal use of District equipment is prohibited. Employees are expected to avoid any use of District equipment or communication with District equipment, which is unrelated to District business, destructive, wasteful, or illegal. No employee shall allow any unauthorized person to rent, borrow, or use any Port District equipment.

#### *XIII-E. Personnel Records*

Employees must notify the personnel office of any change in information contained in their personnel records, including, but not limited to changes of name, address, marital status, and emergency contacts.

#### *XIII-F. Employee Dress Code*

The District has adopted the following standards of dress for its employees:

- All clothing must be neat, clean and in good repair.
- Prescribed uniforms and safety equipment must be worn where applicable;
- Footwear must be appropriate for the work environment and functions being performed;
- Hair must be neat, clean and well groomed;
- Beards, mustaches and sideburns must be maintained in a neat and well-groomed fashion;
- Jewelry is acceptable except in areas where it constitutes a health or safety hazard;
- Good personal hygiene is required;
- Dress must be professionally appropriate to the work setting, particularly if the employee deals with the public;

The General Manager will serve as the final authority on the appropriateness of dress.

#### *XIII-G. Outside Employment*

Full-time employees of the District are expected to devote to the District the hard work and commitment that public service demands. As such, the District generally expects its employees to limit their employment efforts to the District alone and not to seek or accept outside employment. However, those employees wishing employment with another employer concurrently with their employment with the District may petition the General Manager for permission to accept outside employment. If the General Manager determines that the outside employment will not interfere with the employee's ability to carry out his or her District responsibilities and that such employment will not impact negatively on the employee's efficiency or commitment to the District, the General Manager may grant written approval for such outside employment. Additionally, the General Manager will determine whether the outside employment presents a conflict of interest for the employee and may deny permission for outside employment should a conflict of interest arise.

In the event that approval is given, the District may at any time revoke that approval if it becomes evident that the outside employment is affecting the employee's job performance with the District, putting that employee at risk for potential injury or creating a conflict of interest.

*XIII-H. Violations and Penalties*

Any violation of the provisions contained in the policy on use of District property or unauthorized outside employment constitute sufficient grounds for disciplinary action, up to and including dismissal.

*XIII-I. Smoking*

In order to maintain a safe, comfortable working environment and to ensure compliance with applicable laws, smoking in District offices and facilities is strictly prohibited. Employees shall not smoke within twenty feet of any entrance or window of a District workplace. Employees may not smoke in any District vehicle or vessel. If an employee observes a non-employee smoking in an enclosed workplace, the employee shall request, when appropriate, that the non-employee who is smoking refrain from smoking in the enclosed workplace. Because the District may be subject to criminal and civil penalties for violations of applicable smoking laws, we must insist on strict adherence to this policy. Employees smoking in a non-smoking area will be subject to disciplinary action.

*XIII-J. Safety*

Employee safety is a top priority at the Ventura Port District. All employees are expected to take every necessary precaution to ensure a safe work environment and to avoid injury both to themselves as well as to others. Any unsafe working conditions or accidents on the job must be reported to a supervisor immediately, regardless of extent. The District shall furnish each employee appropriate personal safety equipment that shall be used by the employee when conditions warrant or when directed by a supervisor.

#### **XIV. DRUG FREE WORKPLACE**

##### *XIV-A. Policy and Purpose*

It is the policy of Ventura Port District to create a drug free workplace in keeping with the spirit and intent of the Drug Free Work Place Act of 1988. The use of alcohol and/or controlled substances in the workplace is inconsistent with the behavior expected of District employees and subjects all employees, residents and visitors to unacceptable safety risks, and undermines the District's ability to operate effectively and efficiently.

The Ventura Port District has established this Substance Abuse Policy to provide the greatest degree of protection possible to the public and to District employees. The purpose of this policy is to:

- Establish and maintain the District's high level of achievement in providing a safe and healthy working environment for all employees;
- Ensure worker fitness for duty and protect our employees and the public from risks posed by the use of alcohol and/or controlled substances;
- Reduce accidental injury to persons or property and the additional costs, including medical expenses, associated with such accidents and injuries;
- Ensure the safe and efficient performance of employee duties, to promote productivity, and reduce absenteeism and tardiness and other areas of unacceptable job performance; and
- Cooperate with the rehabilitation of those employees who seek such help.

The District recognizes that drug, alcohol and other controlled substance abuse of employees in the workplace is a serious and growing problem of nation-wide proportions. The District is taking this opportunity to reaffirm its commitment to a drug and alcohol free workplace.

The District's policy is designed to promote a drug-free workplace and to comply with applicable state and federal laws. In recognition of the public service responsibilities entrusted to District employees, and because drug and alcohol usage can hinder a person's ability to perform duties safely and effectively.

##### *XIV-B. Applicability*

As a condition of employment, all employees are required to comply with all applicable personnel policies and rules.

This substance abuse policy applies to all District employees.

This policy applies at all times while District employees are on District premises, performing District-related business elsewhere or temporarily off-District premises with an expectation to return to the workplace.

This policy applies to use of prohibited substances by District employees while off-duty and off-premises, to the extent that such employees engage in conduct prohibited by this policy and such conduct tends to create a risk to persons or property, or to District efficiency upon the employee's return to work.

##### *XIV-C. Definitions*

1. Alcohol  
The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.
2. Drug or Drugs  
Any controlled substance that is not legally obtainable under State or Federal law, or a prescription drug obtained or used without benefit of a prescription by a licensed physician.

3. Prescription Drug  
Any substance that can lawfully be obtained or possessed pursuant to a prescription by a licensed physician.
4. Prohibited Substances  
As used in this policy, "prohibited substances" include, but are not limited to, the following:
  - Drugs: marijuana, amphetamines, cocaine, opiates, and phencyclidine.
  - Illegal Mental and Mind-Altering Substances.
5. Regulated Substances  
Alcohol: The use of beverages or substances, including any medication containing alcohol, such that it is present in the body at a level in excess 0.02% while actually performing, ready to perform, or immediately available to perform any District business, is prohibited.  
  
Prescription and over-the-counter medications: Medications shall only be used for their designed purposes. An employee who is taking a medication that may cause drowsiness or impair motor function shall report its use to his or her Supervisor. If the employee feels that the medication is affecting his or her ability to perform his or her job, or the employee's supervisor has reasonable concern that the medication is affecting the employee's ability to perform his or her job, the employee shall request sick leave, if available, and leave the premises. The employee shall not be subject to disciplinary action.
6. Safety-Sensitive Position  
Safety sensitive jobs are those that have public safety implications including, but not limited to, peace or safety officer positions, any position requiring the use of a Class "A" or Class "B" commercial driver's license, any position involving the transport of hazardous materials and requiring a hazardous materials endorsement on their driver's license, or any position involving the operation of a boat or other motorized watercraft. A safety-sensitive employee is considered to be performing a safety-sensitive function during any period in which that employee is actually performing, ready to perform, or immediately available to perform any safety sensitive functions.

*XIV-D. Prohibited Conduct*

1. Possession, Use, Manufacture and Trafficking  
No employee shall engage in the unlawful manufacture, distribution, dispensing, possession, receipt, sale, purchase or use of a prohibited substance or alcohol on District premises, in District vehicles, or while conducting District business off the premises.
2. Drug Paraphernalia  
Except for medically approved purposes, no employee shall engage in the possession, distribution, sale, manufacture or use of drug paraphernalia normally used for consumption or use of controlled or prohibited substances on District premises, in District vehicles, or while conducting District business off the premises.  
  
Possession or use of needles will be permitted for medically approved purposes, i.e., the administration of insulin for a person with diabetes. The employee must submit a written memo to the General Manager requesting permission to possess needles for medically approved purposes. The employee shall use and dispose of said needles in a medically safe manner.
3. Impairment  
All employees are prohibited from being under the influence of alcohol or other prohibited substances during working hours. The use of prescription drugs is prohibited in the workplace by any person other than the person for whom they are prescribed. Such drugs will be used only in the manner, combination and quantity prescribed. The employee shall



advise their supervisor prior to operating machinery, vehicles or equipment that they are taking such medication. Any employee who is reasonably suspected of being impaired, under the influence of a prohibited substance, or otherwise not fit for duty due to substance abuse shall be removed from their duties and be required to undergo a reasonable suspicion test for alcohol or drugs, as hereinafter provided.

#### 4. Alcohol

No employee may report for duty or remain on duty when his or her ability to perform assigned function is adversely affected by alcohol or when it has been determined by a District designated lab or a certified testing facility that his or her breath alcohol or blood alcohol concentration is 0.02% or greater. No employee with a commercial vehicle driver's license, who has a 0.01 breath alcohol concentration or greater, may operate a commercial vehicle, and if a driver does, he or she must be out of service for 24 hours. No employee shall use alcohol while on duty or while performing safety sensitive functions. No safety sensitive employee shall use alcohol within four hours of reporting for duty nor during hours that he or she is on call. Violation of this provision is prohibited and will subject the employee to removal from duty and referral to a Substance Abuse Professional ("SAP") as defined in section XIII-F "Employee Assessment".

#### *XIV-E. Testing for Prohibited Substances and Alcohol*

##### 1. Testing Procedures

Analytical urine-controlled substance testing and breath testing for alcohol will be conducted in accordance with established industry standards at a District-designated laboratory or a certified testing facility. All employees shall be subject to testing prior to employment (drug testing only), based on reasonable suspicion by a Supervisor trained in drug and alcohol recognition, verified by a second trained Supervisor if one can be obtained within 15 minutes: and following a serious accident. All employees will also be tested prior to returning to duty after failing a controlled substance and/or alcohol test. Employees who have returned to duty will be subject to unannounced follow-up tests as determined by a SAP. Safety sensitive employees who perform safety sensitive functions shall also be subject to testing on a randomly selected, unannounced basis, in addition to the testing outlined above.

Testing shall be conducted in the manner designed to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities, which meet all applicable standards. All testing will be conducted consistent with procedures, as established by the laboratory, and consistent with industry standards and any applicable state and federal law. The prohibited substances that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). An initial controlled substance screen will be conducted on each specimen. For those specimens that are positive, a confirmatory gas chromatography/mass spectrometry (GC/MS) test will be performed. The test will be considered positive if the prohibited substance levels present are above the minimum thresholds established in guidelines published from time to time by the Department of Transportation.

Tests for alcohol concentration will be conducted utilizing an approved Evidential Breath Testing (EBT) device operated by a trained Breath Alcohol Technician (BAT). If the initial test for safety-sensitive employees indicates an alcohol concentration of 0.02 % or greater, a confirmation test will be performed at a District designated laboratory to confirm the results of the initial test. An employee who has a confirmed alcohol concentration above 0.00%, but less than 0.02%, will be removed from his or her position for at least twenty-four hours unless a re-test results in an alcohol concentration of 0.00%. However, unless the alcohol concentration is 0.02% or greater, the fact that an employee was removed from duty in the interests of safety shall not form the basis for any discipline.

An alcohol concentration of 0.02% or greater will be considered a positive alcohol test and in violation of this policy.

Any employee who has a confirmed positive prohibited substance or alcohol test will be removed from his or her position, informed of education and rehabilitation programs available, and evaluated by a SAP. The District will make every effort to, and affirms the need to, provide individual employees with dignity, privacy, and confidentiality throughout the testing process.

2. Pre-employment Screening

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 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 jobs that involve the direct influence over children. If the applicant is under the age of 18, the applicant's parent or guardian must sign a consent form authorizing the examination and testing. All offers of employment shall be contingent upon the applicant passing the fitness for duty examination.

3. Reasonable Suspicion Testing

All employees shall be subject to urine and/or breath testing when a Supervisor or Manager believes there is a reasonable suspicion that controlled substances or alcohol use is adversely affecting job performance. A reasonable suspicion referral for testing will be made by the Supervisor or Manager on the basis of documented, objective facts and circumstances, which are consistent with the effects of substance abuse. Examples of reasonable suspicion factors include, but are not limited to, the following:

- Physical signs and symptoms consistent with substance abuse or prohibited substance abuse use including, but not limited to: unusual behavior, slurred or altered speech, odor of alcohol on the body or breath, unsteady gait, lack of coordination, a pattern of abnormal or erratic behavior, a verbal altercation, needle marks, dilated or constricted pupils, agitation, hostility, confused or incoherent behavior, paranoia, euphoria, disorientation, tremors, or other evidence of recent drug or alcohol use. .
- The occurrence of a serious or potentially serious accident caused by human error that the District suspects that drugs or alcohol may have played a role in.
- Fights (to mean physical contact), assaults and flagrant disregard or violations of established safety, security, or other operational procedures.

Reasonable suspicion determinations will be made by a supervisor who is trained to detect the signs and symptoms of controlled or prohibited substance and alcohol use and abuse and who reasonably concludes that an employee may be adversely effected or impaired in his or her work performance due to prohibited substance abuse or misuse.

4. Post-accident testing

All employees will be required to undergo controlled substance and/or breath alcohol testing if they are involved in an accident with a District vehicle or with District equipment while on duty that results in serious bodily injury requiring transportation to a medical treatment facility, death, or when one or more vehicles incurs disabling damage that requires towing from the site, where drug and/or alcohol use by the employee cannot be ruled out as a contributing factor. Employees will also be required to undergo controlled substance and/or breath alcohol testing if they are involved in an accident involving damage to District property estimated at greater than \$5,000.00 or constituting a threat to the public safety and health, where drug and/or alcohol use by the employee cannot be ruled out as a contributing factor.

Following an accident, the employee will be tested as soon as possible, but not to exceed eight hours after the accident for alcohol testing and 32 hours after the accident for controlled substance testing. An employee involved in an accident shall not consume alcohol until they have undergone testing for alcohol. Any employee who leaves the scene of the accident without the appropriate authorization and without submitting to controlled substance or alcohol testing will be considered to have refused the test and subject to disciplinary action up to and including termination. Post-accident testing will include not only the affected employee, but also any other employee whose performance could have contributed to the accident and where drug and/or alcohol use by the employee cannot be ruled out as a contributing factor.

Department of Transportation covered employees (i.e., commercial vehicle drivers) shall be required to undergo controlled substance and/or breath alcohol testing after an accident: where the accident results in loss of human life, if an injured person immediately receives medical treatment away from the accident scene, if the driver is cited for a moving violation within 8 hours of the occurrence, or if one or more vehicles involved in the accident incurs disabling damage.

5. Random Testing

Those employees working in safety sensitive classifications will be subject to randomly selected unannounced testing. The random selection will be performed using a scientifically valid method. Each safety sensitive employee will have an equal chance of being tested each time selections are made. Safety sensitive employees will be tested either just before, during, or just after the safety sensitive employee is on duty.

6. Return-to-Duty Testing

All employees who previously tested positive on a controlled substance or alcohol test must test negative and be evaluated and released for duty by the Substance Abuse Professional (SAP) before being allowed to return to their jobs. As determined by the SAP, employees will be required to undergo unannounced follow-up-controlled substance and/or alcohol breath testing following his or her return to duty. The duration of the period during which the employee is subject to such testing, and the frequency of such testing, will be as determined by the SAP. However, it shall not be less than six tests during the first 12 months nor longer than 36 months total, following return to duty.

7. Employee Requested Testing

Any employee who questions the result of a controlled substance abuse test may request that an additional test be conducted. The additional test may be conducted at the same laboratory or at a different certified laboratory. The test must be conducted on the split sample that was provided at the same time as the original sample. All costs for such testing are to be paid by the employee, unless the second test invalidates the original test, in which event, the District will pay the cost of testing. The method of collecting, storing, and testing the split sample will be consistent with established procedures. The employee's request for a re-test must be made to the doctor responsible for analyzing the original laboratory results, within 72 hours of receiving notice of the initial test result. Requests after 72 hours will be accommodated only where the employee can establish that the delay was due to circumstances beyond the control of the employee.

*XIV-F. Employee Assessment*

Any employee who tests positive for the presence of controlled prohibited substances or whose breath alcohol concentration is above the 0.02% minimum threshold set forth in this policy, will be assessed by a Substance Abuse Professional (SAP). A SAP is a licensed physician, psychologist, social worker, employee assistance professional, or addiction counselor with knowledge and clinically experienced in the diagnosis and treatment of alcohol and substance abuse related disorders. The SAP will evaluate each employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited substance abuse or misuse. The

cost of any rehabilitation and subsequent controlled substance and/or alcohol testing is to be the responsibility of the employee. Employees may use accumulated sick leave, vacation and floating holidays, if any, to participate in a prescribed rehabilitation program.

If an employee is returned to duty following rehabilitation, he or she must agree to and sign a Return-to-Duty Agreement, pass a return-to-duty controlled substance and/or alcohol test, and be subject to unannounced follow-up tests for a period of one to three years, as determined by the SAP.

Employees will be given only one chance for rehabilitation under this policy. The affected employee will be immediately terminated on the occurrence of a second verified positive test result by a District designated lab.

#### *XIV-G. Compliance with Testing Requirements*

All employees are subject to controlled substance testing and breath alcohol testing in accordance with this policy. Any employee who refuses to comply with a request for testing, who provides false information in connection with the test, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution shall be removed from duty immediately and be referred to an SAP. Refusal to submit to a test can include an inability to provide a urine specimen or breath sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior or physical absence or tardiness resulting in the inability to conduct the test. Failure to comply with testing requirements or failure to comply with a referral to a SAP will result in immediate termination.

#### *XIV-H. Rehabilitation Programs*

The District encourages any employee who may have a controlled substance abuse problem to seek confidential counseling and assistance to a qualified program or professional, or through the District's Employee Assistance Program. The District intends to support those employees who voluntarily seek such assistance, but also intends to promptly and firmly identify and discipline those employees who engage in substance abuse which has a negative effect on job performance. An employee with a controlled substance and/or alcohol problem will be afforded an opportunity for treatment in accordance with the following provisions:

1. **Mandatory Admittance**

A rehabilitation program is available for employees who have tested positive for a prohibited substance on a one-time basis only. Employees will be immediately terminated on the occurrence of a second verified positive test result. The employee will pay program costs and subsequent controlled substance and/or testing costs. When recommended by the SAP, participation and completion of the rehabilitation program is mandatory. Failure of an employee to attend and/or complete a prescribed program will result in termination from employment. Prior to return-to-duty testing, an employee must follow the rehabilitation program recommended by the SAP and agree to and sign a Return-To-Duty Agreement. The duration and frequency of follow-up testing will be determined by the SAP but will not be shorter than one year or longer than five years.

2. **Voluntary Admittance**

All employees who feel they have a problem with controlled substances and/or alcohol may request voluntary admission to a rehabilitation program. The employee will pay program costs and subsequent controlled substance and/or alcohol-testing costs. An employee failing to complete the program will be subject to termination from employment. An employee completing a rehabilitation program must agree to and sign a Return-To-Duty Agreement, pass a return-to-duty controlled substance and/or alcohol test and be subject to unannounced follow-up testing for 36 months following return to duty. A positive result on a return-to-duty test or on the unannounced follow-up test within a 36-month period will result in termination from employment. Employees may use accumulated sick leave, vacation and floating holidays to participate in a rehabilitation program. An employee's

voluntary disclosure of a substance or alcohol abuse problem will not terminate any investigation, criminal or administrative, initiated prior to the disclosure.

*XIV-I. Notifying the District of Criminal Drug Conviction*

Any employee convicted of a crime involving the manufacture, distribution, possession or use of a controlled substance or convicted of driving under the influence of alcohol or drugs shall notify the District of such conviction not later than five (5) days after such conviction. A plea of no contest shall constitute a conviction for purposes of this rule and for purposes of imposing discipline under District rules and regulations governing employee conduct. Upon conviction of a crime involving alcohol or drugs as specified above, the employee shall be referred to a SAP for rehabilitation assessment. The SAP will evaluate the employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited substance abuse or misuse.

*XIV-J. Return to Duty Agreement*

If an employee is returned to duty following rehabilitation, he or she must agree and sign a Return-To-Duty Agreement, pass a return-to-duty controlled substance and/or alcohol test, and be subject to unannounced follow-up tests for a period of 12 to 60 months. The cost of any rehabilitation and subsequent controlled substance and/or alcohol testing is to be paid by the employee. Employees may use accumulated sick leave, vacation and floating holidays, if any, to participate in a prescribed or voluntary rehabilitation program.

*XIV-K. Employee Assistance Program*

The District has established an Employee Assistance Program ("EAP") to provide all employees with consultation and referral services in order to reduce the effect of employee personal problems on job performance.

An employee's personal problems may manifest themselves in the work environment and seriously impact job performance. In an effort to ameliorate such impacts, the District makes available to its employees and their immediate family the services of the Employee Assistance Program. All employees are strongly encouraged to utilize the EAP on a self-referral basis. Any employee who persists in deficient job performance as a result of personal problems and does not seek assistance on his or her own initiative may be recommended by the employee's supervisor to the EAP. Participation with the EAP is voluntary, however, and is not part of the District's disciplinary process. Should a supervisor refer the employee to EAP, the employee may request that the EAP release pertinent information to the supervisor making the referral. Such information shall be provided only if the employee signs a conditional waiver of privileged communication allowing for the release of such information.

Confidentiality is of the utmost importance to the District in this regard and is necessary for the ultimate success of the EAP. The EAP is governed by federal and state confidentiality standards and law and can provide a valuable means for improving both the job performance and personal satisfaction of District employees.

## **XV. CONTINUING EDUCATION AND TRAINING**

The District strongly encourages employees to participate in ongoing education and training programs. The District from time to time offers in-house training programs for the purposes of improving employee efficiency, effectiveness, and professional development.

Certain courses offered by education providers other than the District may be considered appropriate training programs for employees provided the General Manager approves them. All completed in-house training as well as District approved training by an outside provider shall be taken into consideration when making advancements and promotions of employees. It is the responsibility of the employee to notify and provide documentation of completion of such training programs. Such documentation will be made a part of each employee's personnel file.