
Administrative/Human Resources Manual for Local Departments of Social Services

Introduction

The Virginia Social Services System relies on a dedicated and competent workforce to assist its customers in working towards self-reliance. Cultivating a diverse workforce capable of accomplishing the system's mission is a key strategy of the Virginia Department of Social Services (Department) and Local Departments of Social Services (LDSS) and one that requires the commitment of Department and local partners throughout the Commonwealth. Part of that strategy is to manage the workforce in a fair and equitable manner, consistent with applicable laws, regulations, and policies.

Employees of LDSS are employees of their locality. The Administrative/Human Resources Manual for LDSS (hereafter called "Manual") sets forth policies and procedures for LDSS that follow the Department's personnel policies. The Manual recognizes that the LDSS abide by all applicable local, state, and federal laws and regulations affecting employment. In the case of any conflict between these policies and law, the applicable legal requirements will prevail.

Because the Manual is intended to acquaint local employees with the LDSS personnel policies, benefits, and related information, it should be read carefully. If an employee has any questions, the supervisor should be consulted for clarification.

The provisions in the Manual indicate current policies with respect to general employee matters and supersede all existing policies and practices, oral or in writing. The provisions may be amended at any time by the Department's Division of Human Resources (Department HR). The Department's HR is vested with the authority to interpret the policies in case of ambiguity.

Neither the employee nor the LDSS has entered into any contract of employment, express or implied based on this Manual or the policies therein.

**Administrative/Human Resources Manual for
Local Departments of Social Services**

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

Chapter 1 Table of Contents

<u>Section</u>	<u>Page</u>
I. Equal Employment Opportunity.....	5
A. Definitions	5
B. Prohibited Acts.....	6
C. Employment Practices Covered.....	6
D. Harassment	7
E. Sexual Harassment	7
F. Complaints Regarding Violations	8
II. Accommodations for Individuals with Disabilities.....	10
A. Accommodations for Individuals with Disabilities.....	10
III. Affirmative Action.....	13
A. Agency Responsibilities	13
B. Distribution	13
C. Training.....	13
D. Complaint Procedure	13
E. Affirmative Action	14
F. Requirements of a Recruitment Plan.....	17
G. Requirements of an Affirmative Action Plan	20
H. Agency Affirmative Action Program Assessment	26
I. Human Resource Policy Record	26
IV. Chapter Appendix - Forms and Notices	28

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

[This page intentionally left blank.]

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

Section I Equal Employment Opportunity

Purpose

The purpose of the Equal Employment Opportunity policy (“EEO policy”) is to ensure that all aspects of employment are conducted without regard to race, color, religion, gender, age, national origin, disability, marital status, pregnancy, or political affiliation.

The EEO policy is designed not only to comply with federal and state laws prohibiting discrimination in employment, but to promote and maintain fairness in the LDSS’ hiring and employment practices and the workplace as a whole. The EEO policy encourages affirmative efforts to recruit qualified candidates of every race, color, religion, age, gender, national origin, disability, or marital or pregnancy status, in order to ensure that all people have fair opportunities in employment based solely on their ability.

The EEO policy does not require, and in fact, prohibits, the hiring, promoting, or in any way advancing of anyone based on these factors, the use of quotas for any group, or any effort to favor one group over another.

Scope

This policy applies to all employees, applicants for employment, and contract employees (hereafter “Employee”).

A. Definitions

1. Discrimination

Adverse or unfavorable treatment on the basis of race, color, religion, gender, age, national origin, disability, marital or pregnancy status.

2. Harassment

Verbal, written, or physical conduct that either denigrates or shows hostility towards a person on the basis of that person’s race, color, national origin, age, sex, religion, disability, marital status or pregnancy that:

- a. has the purpose or effect of creating an intimidating, hostile, or offensive work environment;

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

- b. has the purpose or effect of unreasonably interfering with an employee's work performance; or
- c. adversely affects an employee's employment opportunities or compensation.

3. Retaliation

Overt or covert adverse employment actions such as reprisal, interference, restraint, discrimination, intimidation, or harassment against an individual who has exercised rights under this policy or opposed actions prohibited under this policy.

4. Sexual Harassment

Any unwelcome sexual advance, request for sexual favors, or verbal, written or physical conduct of a sexual nature by a manager, supervisor, co-worker or non-employee (third party). Sexual harassment includes the giving or withholding of a work-related benefit in exchange for sexual favors, e.g., when subjecting an employee to unwelcomed and severe or pervasive sexual comments, innuendoes, touching, or other conduct of a sexual nature which creates an intimidating or offensive place for employees to work.

B. Prohibited Acts

1. Discriminatory employment action against an employee on the basis of race or gender, color, national origin, religion, age, disability or marital or pregnancy status.
2. Harassment of any employee on the basis of race, color, national origin, age, gender, religion, disability or marital or pregnancy status is prohibited. Any employee who perceives the conduct of co-workers, supervisors, visitors, contractors, customers, and others to be harassing should immediately inform the individual(s) that their conduct is unwelcomed and report the conduct to the supervisor or through the complaint procedure.
3. Retaliation against an employee for making a complaint of discrimination, harassment, or retaliation and for opposing a discriminatory or harassing practice is prohibited.

C. Employment Practices Covered

This policy applies to adverse actions relating to all aspects of the employment relationship:

1. Hiring, demotion, promotion, layoff, and termination;

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

2. Performance management and employee development;
3. Disciplinary actions;
4. Compensation; and
5. Work environment.

D. Harassment

Harassment of an employee on the basis of his or her race, color, religion, age, gender, national origin, marital or pregnancy status, or disability will not be tolerated. Harassment can consist of verbal or non-verbal expressions or gestures as well as acts of a physical nature. Jokes, innuendoes, inclusions or exclusions in activities, comments and other acts that are not inclusive or make the workplace hostile to an employee based on his or her race, color, religion, age, gender, national origin, marital or pregnancy status, or disability fall within this type of prohibited activity.

E. Sexual Harassment

1. Sexual harassment is unwanted advances, requests for favors, or other verbal or physical conduct of a sexual nature when:
 - a. submission to such conduct is made either explicitly or implicitly a term or condition of employment;
 - b. submission to, or rejection of, such conduct is used as the basis for decisions affecting the individual's employment; or
 - c. such conduct has the purpose or effect of unreasonably interfering with the individual's work, performance, or full participation in the benefits of employment, or creating an intimidating, hostile, or offensive environment for work.
2. Sexual harassment may take many forms and includes:
 - a. physical assault;
 - b. subtle or overt pressure or direct requests for sexual favors;
 - c. inappropriate display of sexually suggestive objects or pictures; and
 - d. a pattern of unwelcome and unwanted conduct that would be offensive to a reasonable person including:

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

- (1) unnecessary touching;
- (2) using sexually abusive language or gestures (including remarks about a person's clothing, body or body movements, or sexual activities); and
- (3) teasing and joking of a sexual nature.

F. Complaints Regarding Violations

1. LDSS Complaint Process

Complaints of discrimination, harassment or retaliation should be brought to the attention of the local or Department Human Resources/EEO Officer or the LDSS Director. The report should be made in person; however, a report will also be accepted in whatever other format it is presented. If the person allegedly committing the discriminatory, harassing, or retaliating act is the local or Department Human Resources/EEO Officer or the LDSS Director, the employee may bring the complaint to the Chair of the local Board of Social Services.

Charges will be promptly and thoroughly investigated and corrective actions taken if the charge is founded. If it is determined that a violation has occurred, appropriate relief for the employee bringing the complaint and appropriate disciplinary action, up to and including discharge, against the person(s) who violated this policy will follow.

A non-employee who subjects an employee to harassment in the workplace will be informed of the LDSS policy and appropriate actions will be taken.

In all cases, the LDSS will make follow-up inquiries to ensure that the prohibited conduct has not resumed.

An employee accused of violating the EEO Policy will be fully informed of the allegations and will be able to offer an explanation or defense to the charges. An employee found to be violating this policy will be subject to disciplinary action, including termination.

2. External Complaint Process

- a. Department HR has an EEO complaint investigation procedure that may be used.
- b. The Virginia Commission on Human Rights and the U.S. Equal Employment Opportunity Commission also investigate complaints of discrimination.

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

[This page intentionally left blank.]

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

Section II Accommodations for Individuals With Disabilities

Purpose

The purpose of this policy is to set forth policy in compliance with the Americans with Disabilities Act and all federal and state laws that require accommodations for persons with disabilities.

Scope

This policy applies to all applicants for employment and employees.

A. Accommodations for Individuals with Disabilities

1. The LDSS is committed to providing equal employment opportunities to qualified individuals with disabilities who are otherwise able to perform the essential functions of a job with or without accommodation.
2. Position descriptions will set forth which functions are essential so as not to deny employment opportunities to individuals with disabilities.
3. An individual is considered to have a disability if that individual either:
 - a. has a physical or mental impairment which substantially limits one or more major life activities,
 - b. has a record of such an impairment, or
 - c. is regarded as having such an impairment.
4. Reasonable accommodations will be provided to a qualified employee or applicant with a disability when a request for an accommodation is made.
 - a. A qualified employee or applicant is one who is able to perform essential functions of the job with or without accommodation.

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

- b. A request for an accommodation will be denied if the accommodation is not shown to be effective or if it places an undue burden on the LDSS, or if the employee poses a direct threat to the health and safety of himself or herself or others.**

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

[This page intentionally left blank.]

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

Section III Affirmative Action

Purpose

The purpose of this policy is to provide policy and procedures for affirmative action. As a recipient of federal funds, each LDSS must meet the affirmative action requirements of federal law. The reporting and monitoring actions that must be taken are set forth below.

In order to ensure that the objectives of this policy are fulfilled, each LDSS will monitor and report its employment practices in a format prescribed by the Department.

Scope

This policy applies to employment practices that impact all prospective and current employees and volunteers.

A. Agency Responsibilities

B. Distribution

The LDSS is required to distribute the EEO policy to employees and to post the required legal notices concerning equal employment opportunity laws. Among the EEO responsibilities is the legal duty to provide reasonable accommodations to persons with disabilities. The Certification of Disability and Accommodations Required form should be used.

C. Training

The LDSS is responsible for providing appropriate supervisory and employee training covering all aspects of the policy to ensure that employment rules and practices are applied without regard to race, color, religion, gender, age, national origin, disability, marital status, pregnancy or political affiliation.

The training and retraining of supervisors on their responsibilities under the EEO policy is essential.

D. Complaint Procedure

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

The LDSS is responsible for establishing an EEO complaint procedure which is available to all employees regardless of whether they are temporary, part time, or full time, for investigating and resolving complaints brought, and taking prompt remedial action when appropriate. The remedial action taken should correct the wrong committed and protect the victim from further harassment or discrimination.

E. Affirmative Action

1. Commitment to Affirmative Action

The State Department of Social Services strongly endorses equal employment opportunity. All LDSS are required to ensure equal employment opportunity to all of its employees and applicants for employment. Further, the Department encourages effective affirmative action efforts in order to achieve and maintain equal employment opportunity.

Affirmative action is a planned, aggressive, coherent management program to provide for equal employment opportunity. The Affirmative Action Plan (AAP) is the written document through which the LDSS ensures that all persons have equal opportunities in all aspects of employment, including recruitment. The plan should be specifically tailored to the workforce and available skills of the LDSS. It contains specific actions with goals, timetables, responsibilities, and resources to meet identified needs. It is a result-oriented program designed to achieve equal employment opportunity.

The LDSS is required to:

- a. Submit a policy statement, which must contain the local director's signature, and a board statement that must be signed by the chairperson of the local board.
- b. Submit an Affirmative Action Program Assessment, Human Resource Policy Record, Local Human Resource Policy Records, and Affirmative Action Documents.
- c. Submit either a Recruitment Plan/Checklist (agencies with 11-20 employees) or an Affirmative Action Plan/Checklist (agencies with 21 or more employees).

2. Types of Affirmative Actions

Each LDSS must make an affirmative effort to achieve equal employment opportunity. The type of action required is determined by the size of the LDSS.

- a. Class I Agencies:

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

- (1) Distribute the written policy statement prohibiting discrimination in all phases of employment to all employees.
 - (2) Develop a list of recruitment sources to include predominately minority, female and disability organizations and publications.
 - (3) Maintain records on selection criteria, such as questions asked during the interview, methods used to rank applicants, and written reasons why applicants are not selected.
 - (4) Provide regular EEO training for staff whenever necessary to ensure satisfactory job performance. Provide specific training on recruiting procedures, e.g., bona fide qualifications and impermissible questions.
 - (5) Record and maintain for review the number of community and/or organizational appearances made to promote employment with the LDSS.
 - (6) Notify Department HR of any contact from federal regulatory agencies concerning equal employment or affirmation action.
- b. Class II Agencies:
- (1) Distribute the written policy statement prohibiting discrimination in all phases of employment to all employees.
 - (2) Maintain a written Recruitment Plan.
- c. Class III Agencies:
- (1) Distribute the written policy statement prohibiting discrimination in all phases of employment to all employees.
 - (2) Maintain a written Affirmative Action Plan.

3. Documentation Requirements for Affirmative Action

- a. All required material such as policy statements, Affirmative Action Plans and Recruitment Plans shall be submitted to the Commissioner for approval no later than May 1 of the year in which they are due.

The LDSS may adopt the Affirmative Action Plan used by the local jurisdiction provided that the requirements contained in this chapter are met in such Plan.

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

Therefore, any items not addressed in the local jurisdiction plan must be addressed in a supplement to that plan.

- b. Recruitment Plans and Affirmative Action Plans shall be active for two years. The effective date shall be July 1 of the year in which they are due. Class I agencies shall submit an updated Policy Statement every other year. Class II agencies shall submit an updated Recruitment Plan every other year. All Class III agencies shall submit an updated affirmative action plan every other year.
- c. All Class II agencies shall submit with the updated Recruitment Plan a completed copy of the Recruitment Plan Checklist. All Class III agencies shall submit with the updated Affirmation Action Plan a completed copy of the Affirmative Action Plan Checklist.
- d. An annual report shall be submitted by every LDSS regardless of size to the Department's HR no later than September 1 of each year to cover the period of July 1 to June 30. The annual report shall follow the format for Agency Affirmative Action Program Assessment.

4. Responsibility for Affirmative Action Planning

- a. Responsibilities of LDSS Directors
 - (1) Ensuring that policy statements and plans are updated prior to the expiration date and that all LDSS responsibilities are met;
 - (2) Ensuring that all employees are informed of the provisions of the EEO Policy; and
 - (3) Discussing ways in which employees may assist in implementing the Affirmative Action Plan within the LDSS.
 - (4) Being aware at least 90 days and again at 60 days prior to the date the plan will expire;
 - (5) Issuing guidelines as necessary for discharging its responsibilities and informing the Department's HR of these guidelines;
 - (6) Requesting assistance for meeting the provisions for affirmative action planning;
 - (7) Acquiring information on equal employment opportunity;

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

- (8) Providing planning and training on equal employment and affirmative action for LDSS staff, if requested;
 - (9) Helping prepare and distribute information which explains the provisions of the LDSS' and the Department HR discrimination complaint process;
 - (10) Printing and making available information regarding the use of a utilization analysis and setting numerical objectives; and
- b. Responsibilities of the Department's HR:
- (1) Recording the status of each LDSS' plan; and,
 - (2) Conducting periodic reviews of LDSS plans. Such reviews may result in modification of the plan, the numerical objectives section of the plan, or any other section as deemed beneficial to the accomplishment of the objectives of the Affirmative Action Plan.
- c. Responsibilities of the Commissioner:
- (1) Monitoring and supporting the LDSS to accomplish the provisions contained in this section; and
 - (2) Approving LDSS Affirmative Action and Recruitment Plans.

F. Requirements of a Recruitment Plan

1. Employment Parity

The LDSS shall be responsible for the recruitment of qualified minorities and females in order to achieve employment parity, as measured by the utilization analysis.

The Recruitment Plan used by Class II agencies has the following purposes:

- a. To assist the LDSS in developing responsive, flexible, affirmative action recruitment programs;
- b. To assist the LDSS in analyzing profile and utilization data in a timely manner for active recruitment efforts of minorities and females when necessary; and
- c. To assist the LDSS in being able to reasonably predict the number of people that will have to be promoted, trained, or hired during a given time period to

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

ensure an adequate supply of manpower for the restaffing of the local government in an expeditious manner.

2. Communication of EEO Policy and Affirmative Efforts

The Recruitment Plan must contain an effective system of internal and external communication of the EEO Policy for all employees, applicants, and the general public, including, but not limited to, the following:

- a. Posting of federal posters, state posters, and policy statements in conspicuous places throughout the LDSS;
- b. Annually reaffirming the EEO policy so that each employee is aware of the commitment of the LDSS;
- c. Advising, in writing, all recruitment sources of the LDSS' EEO/AA policy;
- d. Including the phrase "An Equal Opportunity/Affirmative Action Employer" in all employment advertisements;
- e. Inclusion of the LDSS' policy statement in the employee handbook, administrative manual(s) and the LDSS' personnel policy and procedure manual(s); and
- f. Recording and maintaining for review the number of community and/or organizational appearances and presentations made by LDSS staff promoting the LDSS' EEO/AA program.

3. Evaluation of Recruitment Efforts

A responsive, flexible recruitment program can only be developed after an analysis is conducted to determine if minorities, females and the disabled are treated equally in all respects.

- a. A utilization analysis will be generated from the Local Employment Tracking System (LETS) on a quarterly basis.
- b. The LDSS must summarize the result of the utilization analysis. Where underutilization is identified, the number of minorities and females needed to achieve the employment parity and the numerical objectives for minorities and females according to EEO-4 Categories must be stated.

4. Recruitment Management

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

- a. The plan should state by job title, the person(s) responsible for conducting active recruitment to reach all appropriate sources, including groups which represent minorities, females, and disabled individuals, to obtain qualified employees on a non-discriminatory basis.
- b. The plan should state the person(s), by job title, responsible for developing a list of recruitment sources, for maintaining contacts with organizations which represent minorities, females, and disabled individuals, and who will review and monitor recruitment procedures to ensure that such procedures provide for equal employment opportunity.

5. Interview Panel

The plan should state that all employees who conduct employment interviews, including individuals who serve on an interviewing panel, will be responsible for applying proper interviewing techniques.

6. Recruitment Efforts

The plan should state that when underutilization exists, the LDSS shall undertake appropriate affirmative action to recruit qualified minority and/or female applicants. All vacancies in an EEO-4 Category where underutilization exists must be announced through open recruitment by the Department's HR. Prior to the dissemination of the Recruitment Announcement for a vacancy, the LDSS should:

- a. Review descriptions of job duties to be certain current position classifications are appropriate and accompanying qualifications are job related.
- b. Identify and clearly define all local recruitment procedures and sources to ensure that they provide equal employment opportunity.
- c. Develop job-related interview questions and criteria for assessing responses to interview questions.

d. Recordkeeping:

The Recruitment Plan should state that recordkeeping will be maintained for a minimum of three years by race and sex on applicants who are interviewed and on applicants who are selected. (Note: this date is not to be contained in any individual personnel record.)

- e. Assessment of recruitment program effectiveness:

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

- (1) The plan should state the person(s) responsible for submitting the LDSS' annual assessment of the recruitment activities report as required in this section.
- (2) The plan should state the person(s) responsible for revising the recruitment plan.

7. Recruitment Plan Checklist

The Recruitment Plan Checklist may be used to help in assessing the effectiveness of the Recruitment Plan.

G. Requirements of an Affirmative Action Plan

The scope of an Affirmative Action Plan must be comprehensive, covering all elements of the organization, personnel policy and management practices. The Affirmative Action Plan is an important, integral element of the LDSS' human resources program and should be considered and managed accordingly.

1. Basic Requirements of an Affirmative Action Plan

- a. Objectives (or goals) to be achieved should be stated in qualitative and quantitative terms;
- b. Specific action steps, or methods, for achieving overall objectives;
- c. Assignment of responsibilities to individuals or organizational units;
- d. Realistic and achievable timetables and target dates; and
- e. A procedure for evaluating the organization's progress toward achieving the objectives and for periodic review and revision of the plan.

2. Example of Affirmative Action Plan Format

Objective: Ensure that all managers and supervisors are fully informed on the LDSS' EEO policy and the programs included the Affirmative Action Plan.

Specific Action Step	Assignment of Responsibility	Target Date	Evaluation Procedure
Provide formal orientation	Director	07/14/2000	Periodic report of

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

on the Affirmative Action Plan to all supervisors.			supervisors completing the orientation.
---	--	--	--

3. Communication of the Plan

The Plan should contain an effective system of internal and external communication of the EEO policy to all employees, applicants, and the general public, including:

- a. Posting of federal posters, state posters and policy statements in conspicuous places throughout the LDSS;
- b. Annually reaffirming the EEO policy so that each employee is aware of the commitment of the LDSS;
- c. Advising in writing all recruitment sources of the LDSS' EEO policy;
- d. Including the phrase, "An Equal Employment/Affirmative Action Employer," in all employment advertisements.
- e. Including the LDSS' policy statement in the employee handbook; and/or
- f. Recording and maintaining for review the number of community and/or organizational appearances and presentations made by LDSS staff promoting the LDSS' EEO/AA Program.

4. Evaluation of the LDSS' Current Policies and Management Practices

- a. The plan must state that the LDSS will report to the Department's HR all complaints alleging discrimination that are filed with any federal agency;
- b. The plan must state that the LDSS will notify the Department's HR of any contact from a federal regulatory agency concerning equal employment or affirmative action; and
- c. The plan must indicate the LDSS' success/failure in attaining numerical goals and objectives in its last affirmative action plan.

5. Delegation of Responsibility

The Affirmative Action Plan should include:

- a. Identification of the designated EEO Officer, by job title for the LDSS; and

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

- b. The duties and responsibilities of the EEO Officer:
 - (1) The delegation of the appropriate authority and responsibility to act in the administration of the Affirmative Action Plan; and
 - (2) The assurance that the EEO officer will receive periodic training in the EEO, as needed to enhance job performance.

6. Recruitment

The Affirmative Action Plan should contain language which indicates that:

- a. The LDSS will plan appropriate recruitment efforts to meet projected needs;
- b. The LDSS will conduct active recruitment to reach all appropriate sources to obtain qualified employees on a non-discriminatory basis;
- c. A list of recruitment sources has been developed and is maintained by the LDSS;
- d. The LDSS will emphasize the maintenance of contacts with organizations that support minorities, females, and people with disabilities in order to recruit qualified candidates for classified positions;
- e. All recruitment literature will clearly convey the LDSS' commitment to equal employment opportunity and will include the phrase "An Equal Opportunity/Affirmative Action Employer"; and
- f. The LDSS will review and monitor recruitment procedures to ensure that they provide for equal employment opportunity.

7. Selection

The Affirmative Action Plan should:

- a. Designate the person in the LDSS responsible for reviewing all selection procedures to ensure that such procedures are job related;
- b. State that the LDSS will maintain selection procedures used for each vacancy;
- c. State who will maintain data on selection criteria, including questions asked during the interview, ranking of applicants, the written reasons why applicants are rejected, and correspondence to applicants;

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

- d. State who will be responsible for analyzing the flow of applicant information through the selection and appointment process, including analyzing the written reasons why applicants are rejected; and
- e. State that the LDSS will ensure that all employees who conduct employment interviews (including individuals who serve on an interview panel) possess knowledge of proper interviewing techniques.

8. Training

The Affirmative Action Plan should:

- a. State that the LDSS will establish training programs in a non-discriminatory manner and include the training and educational resources that will be used;
- b. Specify the anticipated date(s) when orientation of the affirmative action plan will be conducted within the LDSS. The orientation should include information addressing the administration of the policies and procedures incorporated in the plan, and the federal, state, and local laws relating to equal employment opportunity;
- c. State that the EEO officer, managers and supervisors will receive training in EEO, as needed to ensure satisfactory job performance;
- d. State specifically who will be responsible for annually reviewing the training profiles to ensure that training opportunities are being offered to all eligible employees on an equal basis; and
- e. State that each new employee will receive LDSS policies, information, and brochures on grievance procedures, federal and state EEO complaint procedures, and the standards of conduct at orientation.

9. Record Keeping

The plan should state that records will be maintained by race and sex on the following for a minimum of three years;

- a. Applicants interviewed;
- b. New hires (original appointment, transfer-in, and reemployment);
- c. Separations;
- d. Promotions;

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

- e. Lateral transfers;
 - f. Demotions;
 - g. Title changes;
 - h. Redefinitions;
 - i. Training;
 - j. Complaints of discrimination; and
 - k. Standards of conduct offenses.
10. Job Structuring and Upward Mobility
- The plan should:
- a. Specify the person(s) responsible for career counseling and guidance to employees;
 - b. Specify the person(s) responsible for publicizing promotional opportunities within each department and the entire LDSS;
 - c. Specify that an annual review will be made of the race and sex of persons redefined in order to determine if there has been a disparate effect. The LDSS will provide a description of any actions taken to correct any inequity identified; and
 - d. Outline the LDSS' promotion, reclassification, and/or lateral transfer process, indicating each step where discrimination might possibly occur. The LDSS will provide a description of potential actions to be taken should discrimination be found.
11. Numerical Goals and Objectives Assessment
- The assessment should:
- a. Indicate the results of the comparison between the relevant market and the LDSS' work force;
 - b. Summarize, where underutilization is identified, the number of minorities and females needed to achieve employment parity and the numerical objectives for minorities, and females according to EEO-4 categories; and
-

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

- c. Indicate a commitment to analyze factors contributing to underutilization such as the following:
 - (1) Where underutilization is due to disproportionate number of females or minorities lacking minimum qualifications, the LDSS will review the knowledge, skills, and abilities (KSAs) and attempt to determine why minorities or females do not possess the KSAs.
 - (2) Where underutilization is not due to a disproportionate number of minorities and females lacking minimum qualifications, the LDSS shall review its recruitment and selection methods in order to identify points of discriminatory impact.

12. Avenues of Recourse

The Affirmative Action Plan must state that the LDSS:

- a. Makes the information on EEO counseling and the complaint procedures readily available to all employees;
- b. Will provide a system for processing complaints filed internally, e.g., internal complaint procedure, grievance procedure; and
- c. Will readily provide information on the “State Employees Discrimination Complaint Procedure” to all employees and, upon request, to all applicants for employment.

13. Assessment of Program Effectiveness

The Affirmative Action Plan must state:

- a. That the LDSS will provide for a program of conducting exit interviews for any employee terminating employment and the person(s) designed to collect and maintain this information;
- b. The person(s) responsible for analyzing the exit interview information such as reasons given for transfers and separations;
- c. That the LDSS will annually review the affirmative action plan and the revisions will be made as necessary; and
- d. The person(s) responsible for submitting, by September 1 of each year, to the Commissioner of the Department of Social Services an annual report following the Format for Agency Affirmative Action Program Assessment.

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

14. Reasonable Accommodation/Access for the Disabled

The Affirmative Action Plan:

- a. Must indicate that an individual is designated as the LDSS' ADA/504 coordinator and is responsible for coordinating LDSS activities designed to meet the requirements of the Rehabilitation Act of 1973. The 504 coordinator can serve as the liaison with the Virginia Department of Rehabilitative Services, and other pertinent agencies that can provide reasonable accommodation information;
- b. Must state that facilities or programs are accessible to applicants and employees with disabilities;
- c. The plan must state that all employees are afforded the opportunity to voluntarily declare any disabilities they may have; and
- d. Should include the removal of physical barriers that have been or should be undertaken by the LDSS.

H. Agency Affirmative Action Program Assessment

The Agency Affirmative Action Program Assessment form must be used for the Affirmative Action Program Assessment. Class I agencies shall respond to questions 1-6. Class II and III agencies are to answer questions 1-8. This format may be copied or retyped to accommodate the length of the responses.

I. Human Resource Policy Record

Biannually, all LDSS, except those approved as part of jurisdiction-wide plans, are required to inform the Department's HR of the human resource policies, state or local, they are using. This information shall be submitted on the Human Resource Policy Record Form.

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

[THIS PAGE INTENTIONALLY LEFT BLANK.]

Chapter 1 – Equal Employment Opportunity, Disability Accommodation and Affirmative Action

Section IV Chapter Appendix- Forms and Notices

Chapter 2 – Classification & Compensation

Chapter 2 Table of Contents

<u>Section</u>	<u>Page</u>
I. Classification & Compensation.....	3
A. Occupational Structure (Job Classification)	3
B. Classification of Positions.....	4
C. Types of Positions	5
D. Categories of Employees.....	5
E. Organizational Charts	7
F. Compensation Schedule and Plan.....	7
G. On-Call Compensation.....	14
H. Other Local Compensation Issues.....	16
I. Deviations	17
II. Fair Labor Standards Act (FLSA).....	23
A. Definitions	23
B. Hours of Work	25
C. Overtime	28
D. Exempt Status	29
E. Violations.....	29
III. Guidelines for Determining FLSA Exemption Status of Employees	31
A. Responsibilities.....	31
B. Tests for Determining Exemption Under FLSA.....	31
C. Primary Duty – Exempt Employee	33
D. Exempt Status	34
E. Discussion of Terminology Used Throughout the Act	36
F. FLSA Recordkeeping Requirements.....	39
G. Comparison of Compensatory and Special Duty Leave.....	41
H. Computing Compensatory and Special Duty Leave	43
I. Certification of Exempt Employees	45
IV. Compensatory Leave.....	47
A. Definitions	47
B. Purpose of Compensatory Leave.....	48
C. Accrual of Compensatory Leave.....	49
D. Use of Compensatory Leave	49
E. Treatment of Leave Upon Change in Status.....	49
F. Violations.....	50

Chapter 2 – Classification & Compensation

V.	Special Duty Leave	51
	A. Definitions	51
	B. When Special Duty Leave May Be Given	51
	C. Earning and Using Special Duty Leave	52
	D. Special Duty Leave Must Be Authorized	53
	E. Treatment of Special Duty Leave Upon Change in Status	53
VI.	Holidays.....	55
	A. Days Observed as Holidays	55
	B. Compensation Issues	56
	C. Religious Observances.....	56
VII.	Chapter Appendix – Forms & Notices	57

Chapter 2 – Classification & Compensation

Section I Classification and Compensation

It is the objective of the State Board of Social Services to establish and maintain a job classification structure and employee compensation plan that cultivates a high performing, diverse and well-trained workforce that is engaged in continuous learning.

A. Occupational Structure (Job Classification)

VDSS HR develops the Occupational Structure which includes approved descriptions for each occupational group and occupational title in the group. Each title is assigned a title code and a pay band and pay tier within the band.

1. Purpose

The purpose of the structure is to organize and delineate the specific job tasks that need to be performed in order to provide social services to the citizens of the Commonwealth of Virginia. All occupational groups/titles included represent the duties and responsibilities that are inherent to effective LDSS performance.

2. Components

The Occupational Structure is consistent with the federal Standard Occupational *Categories* (SOCs). The structure categorizes jobs by professions. Each profession is subdivided into Occupational *Groups* (OG) that include Occupational *Titles*.

All jobs are classified to an Occupational Title. The Occupational Title Description (OTD) includes a general description of work, general work tasks/duties, and the necessary knowledge/skills/abilities, education/training, and/or other job requirements. The OTD serves as a basis for classifying jobs at the local agency level.

3. Maintenance

VDSS HR conducts periodic reviews or studies as part of its maintenance of the classification structure / compensation plan. When a need for a new title or revision to an existing title is identified, a proposal is submitted to the State Board of Social Services (State Board) for approval.

An LDSS may be part of a locality's classification system provided minimum standards for comparable classifications within the Occupational Structure are met. This would be a "deviation" which requires review and approval by the State Board and/or the Commissioner. The approval process for deviations should be followed.

Chapter 2 – Classification & Compensation

4. Sanctions

Should an LDSS not comply with the principles and practices of the classification structure, withholding of State reimbursement funding may result.

B. Classification of Positions

1. Occupational Title Descriptions (OTDs)

- a. VDSS HR provides written descriptions of the occupational titles available for LDSS use. The descriptions provide the general nature of work characteristics of a given title and contain qualification guidelines.
- b. VDSS HR uses the descriptions as guides when determining the positions that may be allocated to a respective occupation. They are not intended to prescribe the duties and responsibilities of any given position or to preclude the local director's authority for assigning duties or controlling the work of any staff member.

2. Employee Performance Plan and Evaluation (EPPE)

- a. An Employee Performance Plan and Evaluation (EPPE) contains a position summary and a list of core responsibilities/essential duties. The LDSS must develop an EPPE for each position.
- b. A particular position may vary from another position with the same position title due to workload priorities, external factors, or local needs. When this variation occurs, the job duties should be reprioritized.

3. Establishment, Abolishment, or Classification of Positions

a. Local Position Request Form (LPRF)

VDSS HR allocates positions to their appropriate Occupational Group and Title on the basis of assigned duties and responsibilities. Whenever there is a need to establish a new position, abolish an existing position, reallocate, or redefine a position, the local director submits a signed LPRF, an organizational chart, and an EPPE to VDSS HR for review and approval.

b. Types of Local Position Actions

- (1) Position Establishment – The creation of a new position
- (2) Position Abolishment – The elimination of an existing position

Chapter 2 – Classification & Compensation

- (3) Position Reallocation – The reclassification of a vacant position from one Occupation Title to another Occupation Title.
- (4) Position Redefinition – The reclassification of an encumbered position in recognition of a gradual, unplanned change in duties. A redefinition may be upward, downward, or lateral.

C. Types of Positions

1. Permanent Position

A permanent position has an indefinite duration with no expiration date. Depending upon circumstances, the permanent position may be filled by an employee whose status is probationary, regular, temporary, or emergency.

2. Restricted Position

A restricted position is established for a specific time period with an end date. A restricted position may be filled by an employee whose status is probationary, restricted, temporary, or emergency. A restricted position may be extended upon request.

3. Temporary Position

A temporary position is established to meet a special need of the LDSS. The duration of a temporary position typically does not exceed twelve months, and it is not renewed or extended. Only an employee whose status is temporary or emergency may fill this type of position.

4. Emergency Position

An emergency position may be set up for one year's duration to meet special or immediate needs of the LDSS. An emergency position is filled only by an employee whose status is emergency.

5. Seasonal Position

A seasonal position is continuous with no end date and may be filled by an employee whose status is temporary or emergency. It may be filled for time periods when there is a need for extra help (for example, when the Fuel Assistance Program is active).

D. Categories of Employees

Any individual employed by an LDSS has no guarantee of employment for a particular term and may at any time be terminated in accordance with policy. Local departments should confer with their local jurisdictions regarding categories of

Chapter 2 – Classification & Compensation

employees and hours worked to ensure compliance with laws requiring provision of benefits (such as the Patient Protection and Affordable Care Act).

1. Probationary Employee

Individuals accepting a new, re-employment, or transfer-in appointment to a permanent or restricted position serve a twelve-month probationary period. Any individual hired into a permanent or restricted position with probationary status is employed through a competitive selection process.

Probationary employees are notified when they obtain either regular or restricted status (depending on whether they are in permanent or restricted positions).

For information about conditional status periods see Chapter 6. Section I.A.6. Definitions and Chapter 6. Section I.D.1. Interim Evaluations.

2. Regular Employee

Individuals employed in permanent positions obtain regular status upon successful completion of their probationary periods.

3. Restricted Employee

Individuals employed in restricted positions obtain restricted status upon successful completion of their probationary periods.

If a restricted employee moves to a permanent position or the position occupied by the employee is changed to permanent status, the employee's status changes from restricted to regular status.

4. Temporary Employee

Employees with temporary status are employed through a competitive selection process. They may occupy permanent, restricted, temporary, or seasonal positions. A temporary employee is hired with the understanding that the employment is time-limited and does not serve a probationary period.

Temporary employees receive and accrue no benefits except those required by law. Temporary employees are eligible to apply for positions that are recruited through an intra-agency selection process.

Normally the temporary status of employees in a restricted or permanent position does not change during the time of their employment. However, the status of a temporary employee may be changed to probationary, restricted, or regular if the LDSS determines that the need for the employee is no longer time-limited. Time served is credited to part or all of the probationary period.

Chapter 2 – Classification & Compensation

5. Emergency Employee

Employees with emergency status may be employed without going through a competitive selection process. They may occupy permanent, restricted, temporary, seasonal, or emergency positions. An emergency employee is hired with the understanding that the employment is time-limited to fill an immediate need of the LDSS. Emergency employees receive and accrue no benefits except those required by law. Emergency employees are not eligible to apply for positions that are recruited through an intra-agency selection process.

Emergency employee may work no more than the full-time equivalent of 180 work days (consecutive or non-consecutive) in a twelve-month period.

E. Organizational Charts

Organizational charts provide an overview of the LDSS structure and contain job titles and position numbers for each position depicted on the organization chart. Each local director is responsible for maintaining an up-to-date organizational chart that includes the local director's signature and date.

F. Compensation Schedule and Plan

1. Purpose

The purpose of the Basic State Compensation Schedule is to provide a uniform structure from which each LDSS develops its compensation plan. The plan should ensure comparable pay for comparable work and allow for competitive salaries which attract and retain employees.

2. Development of the LDSS Local Compensation Schedule and Plan

The purpose of the local compensation plan is to define particular rates of compensation for an Occupational Title in use by the LDSS so as to ensure equal pay for equal work and competitive salaries for attracting and rewarding a well-qualified workforce.

a. Development Period

Each LDSS develops its own local schedule and compensation plan annually. Instructions for completing the local schedule and compensation plan are developed by VDSS HR and provided to each LDSS. Changes to the Basic State Compensation Schedule are included. VDSS HR will notify the LDSS of specific timeframes for the submission of the annual local compensation plan and policies.

Chapter 2 – Classification & Compensation

b. Contents

The LDSS's local schedule and compensation plan includes a listing of all Occupational Titles used by the LDSS along with corresponding codes, band/tiers, and pay ranges. Development of the local compensation schedule ensures internal equity in terms of pay practices. Each LDSS's annual compensation plan includes a strategy for awarding all of the types of salary increases approved for the fiscal year.

c. Selection of Salary Ranges (also see "Range Revisions")

Each Occupational Title is assigned a salary range on the Basic State Compensation Schedule. Exceptions may be granted by VDSS HR based on market surveys of salaries paid for similar or related work, the availability of qualified applicants, sources of competition from other employers in the locality, and turnover rate.

d. Types of Salary Actions

The salary ranges selected must maintain the hierarchical integrity of the defined Occupational Groups/Titles within the LDSS and the respective tiers/levels within the groups. The following compensation options are available to the LDSS in developing its compensation plan/strategy:

(1) Starting Pay

The annual local compensation plan includes a provision for setting the rate of appointment. All employees are paid at least the minimum Basic State Compensation rate for their Occupational Title. With VDSS HR approval, rate flexibility is permitted.

Agencies have the flexibility to:

- (a) Set the hire rate at the minimum of the salary range for the position, regardless of any other consideration, **or**
- (b) Set the hire rate above the position minimum, based on pay factors such as the candidate's credentials (including related experience), internal alignment, and the LDSS budget. The LDSS's methodology for determining the starting pay is documented in the LDSS's annual local compensation plan.

Chapter 2 – Classification & Compensation

(2) Probationary Increase

This type of increase may be awarded upon successful completion of a probationary period. Probationary increases must be documented in the local compensation plan.

(3) Promotional Increase (Not to Exceed 15%)

A promotional increase may be awarded as a result of an internal candidate's competitive attainment of a different position assigned to a higher pay band or higher tier within the same pay band. The promotional salary increase must not exceed the maximum of the approved advertised salary range for the new position. The percentage of increase can vary from employee to employee and is based on the methodology documented in the LDSS's approved local compensation plan.

(a) The promotional salary increase must be at least the minimum of the new position salary range or up to 15% above the employee's current salary. Promotional salary must not be below the new position salary range minimum, even if the new salary exceeds 15% above the employee's current salary.

(b) An exceptional promotional salary increase above 15% of the employee's current salary and above the new position salary range minimum is permitted as indicated below.

(i) The approved local compensation plan must indicate the methodology for determining any exceptional promotional salary increase.

(ii) The exceptional promotional salary increase is based on individual pay factors including the candidate's work experience, knowledge, skills, and abilities, education, licensure, certification, and operational pay factors such as agency need, internal alignment, and the LDSS budget.

(iii) To exercise this option, agencies must consult with VDSS HR to discuss justification for the exceptional promotional salary increase offer prior to seeking approval from the local board.

(iv) After obtaining local board approval, agencies must obtain VDSS HR's approval before making an exceptional promotional salary increase offer.

Chapter 2 – Classification & Compensation

(4) Upward Redefinition Increase (Not to Exceed 10%)

An upward redefinition occurs when a position is reclassified as the result of accretion of higher level duties on the part of the incumbent. The salary is adjusted as documented in the LDSS's compensation plan. The percentage increase is the same for all employees during the fiscal year.

(5) Merit Increase

A plan for awarding a merit increase must define the criteria for approving the salary increase as defined in the LDSS's local compensation plan to include the interval of time between each award period.

(a) Merit Increase Options:

1. one merit increase date applies to all employees, or
2. the merit increase date is set by the LDSS for its employees based on a date such as:
 - a. the anniversary of the initial appointment
 - b. anniversary of permanent status
 - c. anniversary of most recent promotion

(6) Cost-of-Living Increase

If the cost-of-living option is selected, then it must be clearly stated in the compensation schedule. A cost-of-living increase is separate and apart from any other salary increase. Cost of living increases must be consistently and uniformly applied to all employees of the LDSS. A cost-of-living increase does not require a corresponding salary range revision.

(7) Range Revisions (also see "Selection of Ranges")

When warranted and with prior approval from VDSS HR, an LDSS may adjust a position's minimum pay upward using a Range Revision process. The local director should notify VDSS HR before starting the range revision process. The LDSS with guidance from VDSS HR is responsible for gathering all necessary documentation to support the request.

A range revision may be granted on the basis of:

Chapter 2 – Classification & Compensation

- Market study
- Lack of qualified applicants
- Competition from other employers in the locality
- Turnover rate

Complete documentation that demonstrates the basis for the range revision and the proposed salary range(s) must be attached to the local compensation plan in the year the range revision will take place.

Salaries of employees in the affected positions/Occupational Title(s) may be adjusted as follows:

- (a) Employee salaries that fall below the new minimum must be increased to the new minimum.
- (b) Employee salaries that are at/above the new minimum may be adjusted by a percentage equal to the percentage adjustment of the new minimum.

(8) Demotion Salary Rates

The five types of demotion salary rates are:

(a) Demotion in Lieu of Layoff Due to a Reduction in Force

When an employee is moved to a position in a lower band or a lower tier in the same band within the LDSS due to a reduction in force, the salary rate remains the same, provided the rate of pay does not exceed the new salary range maximum. If the employee's current salary is above the new salary band maximum, the current salary is frozen for six months before being reduced to the maximum of the new salary range.

(b) Demotion Due to Downward Redefinition

When an employee is in a position that is redefined to a lower band or a lower tier in the same pay band, the salary rate remains the same. If the employee's current salary is above the new salary band maximum, the current salary is frozen for six months before being reduced to the maximum of the new salary range.

(c) Voluntary Demotion (Competitive)

If an employee applies for and accepts a position in a lower pay band or a lower tier in the same pay band within the same

Chapter 2 – Classification & Compensation

LDSS, the resulting salary is set based on the methodology indicated for starting pay in the LDSS's local compensation plan. The new salary cannot be greater than the salary range maximum and cannot be greater than the current salary.

(d) Demotion due to Unacceptable Performance

If an employee's performance is not acceptable, the employee may be moved to another position in a lower band or a lower tier in the same band. The current salary is reduced by 5 percent for each tier moved – not to exceed 15 percent overall (unless the resulting salary is above the band maximum for the new position).

(e) Demotion for Disciplinary Reasons

If, for disciplinary reasons, an employee is moved to another position in a lower band or a lower tier in the same band, the current salary is reduced by 5 percent for each tier moved – not to exceed 15 percent overall (unless the resulting salary is above the band maximum for the new position).

(9) Internal Salary Alignment (Not to exceed 10% per fiscal year)

Internal salary alignment is a fairness criterion that takes into consideration the proximity of an employee's salary to the salaries of other similarly situated employees on such factors as experience, training, duties and responsibilities, performance, knowledge/skills/abilities, and competencies.

LDSS electing to implement this pay practice must document the criteria for awarding such adjustments in their local compensation plans.

(10) Temporary/Acting Pay

An LDSS may grant temporary pay to any employee who performs different key (essential) duties on an interim basis or is assigned to a critical, time-limited project, not to exceed 10 percent of base pay. One percentage amount applies to all employees. In addition, if the employee assumes new or increased supervisory responsibility in addition to the other interim duties, then a greater percentage amount may be granted, not to exceed 10 percent of base pay overall. The percentage(s) must be documented in the LDSS local compensation plan.

Chapter 2 – Classification & Compensation

(11) Salary Adjustment for Attainment and/or Use of a Critical Skill

LDSS may elect to grant increases to base salaries of employees who have acquired critical skills now being exercised as part of their regular job duties. Examples include attainment of licensures, certifications, degrees, and bilingual skills that are relevant to and applicable to the job where there is no change in position responsibilities, occupational title, pay band or tier.

Current salaries can be increased by no more than 10 percent; new salaries must fall within the current position salary range. The LDSS must document the skills eligible for such increases and the percentage amount associated with each in its local compensation plan.

Note: If the use of these skills was already factored in the determination of an employee's starting salary or most recent promotional increase, this practice should not be exercised for the employee.

(12) Competitive Salary Offer (Counteroffer)

An LDSS may elect to make a counteroffer to an employee who has received a verified, higher salary offer for a position in another Virginia LDSS, a Virginia state agency (including VDSS), or a private-sector employer. The following conditions apply:

- Counteroffers are completely discretionary on the part of the LDSS for each employee and each offer and should be based on bona fide business need;
- Only one counteroffer may be made per offer;
- Counteroffer salary is not to exceed offered salary; and
- Counteroffer salary is not to exceed current position's pay band maximum.

(13) End of "Trainee" Status (Not to Exceed 5%)

In certain designated Occupational Groups, an LDSS may establish a career path for Occupational Titles within that group. The LDSS must develop an End of Trainee (EOT) plan that identifies criteria that must be met by the trainee.

The first level in the career path is designated as a trainee level. After successful completion of the training period, the employee is eligible to move to a higher level in the Occupational Group (in most

Chapter 2 – Classification & Compensation

cased to level II). The LDSS may elect to give salary increases for such movement as indicated in the LDSS compensation plan.

Note: For administrative purposes, the employee will be in the same-numbered position, but the position and employee will need to be administratively redefined.

(14) **Amendments to the Basic State Compensation Plan**

Amendments to the Basic State Compensation Plan are sent to VDSS HR. VDSS HR advises the LDSS of all changes to the compensation plan and any mandated actions that require revision of local salaries.

G. On Call Compensation

1. Covered Employees

Employees who perform adult and/or child protective services must be knowledgeable in adult and/or child protective services policy requirements and have completed appropriate training. Covered employees may include individuals assigned to the following Occupational Groups:

- a. Social Service Directors
- b. Family Services Specialists (including Managers and Supervisors)

2. LDSS On-call Compensation Plan

The On-call-compensation policy is included within the LDSS's annual compensation plan. Reimbursement by VDSS is limited to the maximum rate allowed; however, the LDSS may provide additional compensation if the additional dollars are available from non-VDSS sources.

a. **Compensation for On-Call Duty**

- (1) The local board determines the type of supplemental compensation to be given to an employee for being assigned on-call duty.

The local board may select one of the following options:

- Providing monetary compensation in a lump sum amount not to exceed \$16.00 per each 8 hour on-call shift, or
- Providing monetary compensation equivalent to one hour of compensation at the employee's normal rate of pay.

Chapter 2 – Classification & Compensation

The local board may allow the local director on a case by case basis to substitute:

- Providing one hour of special duty leave per each on-call assignment.

- (2) This supplemental compensation is given for the inconvenience of being on-call; it is in addition to any compensation or overtime compensation that may be earned for actual hours worked.

b. Compensation for Providing Direct Service While On-Call Duty

- (1) The LDSS's board determines the type of compensation to be given to employees involved in providing direct service while on-call. If an employee is called out for direct services while on-call, the following options apply:

- (a) For employees who are exempt from the Fair Labor Standards Act or non-exempt employees who have actually worked fewer than 40 hours in that work week (including the direct service hours while on-call), the LDSS has the option of:

- Compensating at the regular salary rate for each hour actually worked while on-call, or
- Providing special duty leave for each hour actually worked while on-call, or
- Exercising either of the above options on a case-by-case basis.

- (b) For employees who are non-exempt under the Fair Labor Standards Act and who have actually worked in excess of 40 hours in a work week when the on-call services delivery hours are added to the actual hours worked, the LDSS has the option of:

- Providing overtime payment at time-and-one-half the regular hourly rate for each hour of direct services in excess of 40 hours in the work week, or
- At the option of the local director and prior to overtime hours worked, a non-exempt employee may elect to receive compensatory leave at time-and-one-half for each

Chapter 2 – Classification & Compensation

hour of direct services in excess of 40 hours in the work week.

- (c) Compensation for Provision of 24-Hour Adult and/or Child Protective Services by the Local Director and Supervisory Staff:

The local board determines if the local director will be one of the employees designated to provide 24-hour direct adult and/or child protective services. If designated, the local director is entitled to the same compensation as provided to other exempt employees who provide the service.

H. Other Local Compensation Issues

1. Local-Only Reimbursement When the Local Director Serves as the Local Board

When the local director serves on the local board, the director may receive up to \$3,000 in additional compensation for board services. Per the provisions of Code of Virginia §63.2-310, this supplemental compensation is paid out of local only funds. The \$3,000 supplemental pay is not eligible for reimbursement.

2. Court Service or Required Attendance at Administrative Hearings

When an employee is called for jury duty or is subpoenaed in a case (provided the employee is not a party), the court reimburses the employee for expenses. This money, which generally is a fixed amount, is not to be offset from the employee's wages. Per the provisions of Code of Virginia §18.2-465.1, an employee cannot be made to use accrued leave or have a deduction from wages/salary. An employee may choose to surrender any compensation received for jury duty or court service and use available leave such as civil or accrued annual leave instead.

If an employee is compensated for his services as a witness on a matter that does not arise out of his or her employment, the compensation received is to be deducted from wages/salary if the employee does not choose to use accrued paid leave. Note: Nominal witness fees are reimbursements and not compensation.

3. Reimbursement for Overtime

Reimbursement is made for overtime payment in accordance with the Fair Labor Standards Act (FLSA). The reimbursement is paid up to the reimbursable maximum of the applicable position classification. An LDSS with an approved deviating compensation plan also will be reimbursed up to the maximum of the applicable position classification. When the local deviating maximum exceeds

Chapter 2 – Classification & Compensation

the State reimbursable maximum, local-only funds are used to compensate for funds expended.

4. Responsibility for Maintenance of the Local Schedule and Compensation Plan

Maintenance of the local schedule and compensation plan is the shared responsibility of the local board, the local director, the State Board, and VDSS HR.

(a) State Board's Responsibility:

The State Board approves the State classification and compensation schedule and plan.

(b) Local Board's Responsibility:

The local board approves and adopts the local compensation plan subject to final approval by VDSS HR.

(c) Local Director's Responsibility:

The local director grants salary increase in accordance with the local compensation plan.

(d) VDSS HR's Responsibility:

VDSS HR approves the local compensation plans.

5. Sanctions

Actions taken by the LDSS are subject to review and audit for determining conformity to the compensation plans. When VDSS finds that non-compliance or inappropriate actions have occurred, sanctions may be imposed and/or reimbursement of funds withheld until such time as deemed necessary for the proper administration of the local compensation plan.

I. Deviations from the Basic State Classification and Compensation Plan or Deviation from the Basic State Compensation Plan

1. Process for Requesting Approval to Deviate from the Basic Plan(s)

LDSS may follow the compensation or the classification/compensation systems of their local jurisdiction. If one of these options is selected, the system must apply to all governmental employees within a given jurisdiction.

State Board approval is required before an LDSS may follow local systems. Such actions are known as "deviations." The local jurisdiction's administrative or

Chapter 2 – Classification & Compensation

human resource office is responsible for integrating (and subsequently maintaining) the LDSS into the local jurisdiction's system(s).

- a. Basis for Submission of an Initial or Subsequent Request to Deviate
 - (1) A written request, discussing the rationale for the request for deviation, is submitted to VDSS HR.
- b. Justification and Documentation Provided with Initial and/or Subsequent Deviation Requests
 - (1) The local jurisdiction provides the following documentation, depending upon the type of request:
 - (a) Classification and Compensation Deviation Request -
 - (i) A written request must be submitted to VDSS HR 60 days in advance of the proposed effective date of deviation. A plan for implementing the change must be provided. The plan must explain how employees' class specifications and salaries will be used to convert positions and employees from the current plan to the proposed new one.
 - (ii) All applicable Occupational Title Descriptions to be used in the LDSS must be provided.
 3. A list of all locality classifications and their position ranges must be provided.
 4. All present and proposed salary ranges, a plan for implementing the new salary ranges, and an estimate of the cost of making the changes must be submitted to VDSS HR. The new schedule must be submitted at least 60 days prior to the implementation date. All salary minimums must equal or exceed those applicable job classifications in the VDSS Basic Compensation Schedule for local departments. Any other procedures pertaining to the setting and revising of salaries should be included.
 5. Applicable portions of Parts A, B and C of the Jurisdiction-Wide (JW) Self-Analysis Form must be completed and submitted.
 6. Any study documents or reports indicating how conclusions were reached must be submitted. Also, a statement as to

Chapter 2 – Classification & Compensation

how the locality designates equivalent job classes must be provided.

7. Other items to be submitted include promotion and demotion policies and the plan for compensating employees whose class specification falls in the child protective services series.

(b) Compensation-Only Deviation Request -

- (i) A written request must be submitted to VDSS HR 60 days in advance of the proposed effective date of deviation. The request should include an explanation as to why the deviation is needed. Special consideration should be given to the range revision option as an alternative to deviating in compensation only.
- (ii) A plan for implementing the change must be provided. The plan must explain how employees' salaries will be converted from the current plan to the proposed new one.
- (iii) All present and proposed salary ranges, a plan for implementing the new salary ranges, and an estimate of the cost of making the changes must be submitted to VDSS HR. The new schedule must be submitted at least 60 days prior to the implementation date. All salary minimums must equal or exceed those in the Basic State Compensation Plan.
- (iv) Applicable portions of Part C of the JW Self-Analysis Form must be completed and submitted.
- (v) Other items to be submitted include promotion and demotions policies and the plan for compensating employees who have child protective services duties.

(c) Validation of Knowledge, Skills, and Abilities (KSAs) -

It is the responsibility of the locality to validate the entry-level and full-performance knowledge, skill, and ability (KSA) statements for all deviating classifications. Entry-level KSAs are the desired and/or required qualifications for entry into a position. An applicant for employment may acquire entry-level KSAs through education, experience, and/or training. Entry-level KSAs are used in job postings (advertisements).

Chapter 2 – Classification & Compensation

Full performance KSAs provide a clear indication of what is needed in order to function fully in a position.

- (d) Evaluation and Approval of Deviation Requests -
- (i) Upon receipt of all required documentation, VDSS HR staff reviews and evaluates the deviation request. As part of the evaluation process, VDSS HR compares the proposed classification to existing state classifications (Occupational Titles) and corresponding salary ranges.

When necessary, VDSS HR staff meets with the jurisdictional employee responsible for coordinating information with VDSS HR. Meetings also may be held with consultants, human resource officers, local directors, and independent contractors. The LDSS may not implement a new deviation or make changes to an existing deviation plan without prior VDSS HR and State Board approval.
 - (ii) One of the primary factors taken into consideration by VDSS HR when deciding whether or not to approve the deviation request is the local jurisdiction's ability to provide support services. There should be a designated human resource office with the capability of reviewing, revising, and maintaining adequate systems that will enable operations to function smoothly and equitably and be responsive to the needs of the local jurisdiction.
 - (iii) If VDSS HR's evaluation is favorable, VDSS HR will submit a recommendation for approval to the State Board.
 - (iv) VDSS reserves the right to disapprove any proposed actions that are incongruent with the policies and procedures that protect all local employees.
 - (v) In no case shall an LDSS compensate any employee below the minimum salary rate for any corresponding state classification. For reimbursement purposes, all salaries shall be limited to the maximum of the State applicable range for the comparable classification. However, the locality may use local-only funds to compensate employees above the range maximum.

Chapter 2 – Classification & Compensation

(e) Financial Responsibility -

Per the provisions of Code of Virginia §63.2-330, the locality absorbs all costs associated with the deviation. State funds are not available for these purposes.

Chapter 2 – Classification & Compensation

[This page intentionally left blank.]

Chapter 2 – Classification & Compensation

Section II Fair Labor Standards Act (FLSA)

Purpose

The purpose of this policy is to provide guidelines for implementing the provisions of the Fair Labor Standards Act (FLSA).

Scope

This policy applies to all employees.

A. Definitions

1. Compensatory Leave

Paid time off which non-exempt employees may receive in lieu of overtime pay.

2. Department of Labor (DOL)

The U.S. Department of Labor is the federal agency in charge of enforcing the FLSA.

3. Fair Labor Standards Act

The Fair Labor Standards Act of 1938 (FLSA) is a federal statute which establishes minimum wage requirements and provisions for overtime pay, provisions for compensatory time, child labor, equal pay, and recordkeeping.

4. Joint or Dual Employment

An employment situation that arises when an employee performs separate jobs for the same employer; these jobs may be at the same or different rates of pay. The total hours worked in these separate jobs are aggregated for purposes of computing hours worked.

5. Exempt Employee

A salaried employee who because of the nature of the job duties performed is not subject to the overtime provisions of the FLSA and therefore not entitled to overtime pay.

6. Hours Worked

Hours that an employee actually works.

Chapter 2 – Classification & Compensation

7. Minimum Wage

Minimum hourly rate that an employee must receive for work performed; that rate is established by federal and state law. The minimum wage requirements do not apply to exempt employees.

8. Non-Exempt Employee

An employee who is entitled to overtime pay for the hours worked over forty hours in a workweek.

9. On-Call

Being available to work upon the call of the LDSS generally, with some restrictions on the employee's movement and activities.

10. Regular Rate of Pay

The average hourly rate of pay for an employee.

11. Retaliation

Adverse actions (discharge, unfair or discriminatory pay practices or other inequitable terms and conditions of employment) taken against an employee who has filed a lawsuit under the FLSA, instituted any proceedings under the FLSA, testified or agreed to testify in a proceeding instituted under the FLSA, or otherwise has asserted a right or opposed a practice under the FLSA.

12. Salary

The predetermined amount of compensation that an employee receives regularly on a weekly or less frequent basis which is not subject to reduction because of the quality or quantity of the work performed.

13. Workweek

A fixed and regularly recurring period of 168 hours or seven consecutive 24-hour periods that is established by the LDSS; the workweek may be uniform for all employees or it may differ for different positions or employees. The workweek does not have to coincide with the calendar week, but instead it may begin on any day of the week and at any hour of the day. The LDSS establishes the workweek for each position.

Chapter 2 – Classification & Compensation

B. Hours of Work

1. Definition of Work

All hours that an employee is required, or permitted, to engage in activities that involve mental or physical exertion on behalf of or for the benefit of the LDSS. This includes all time that the employee is required to be on the premises of the LDSS or at some prescribed place (e.g., home visits or court) or that an employee is required or permitted to work (e.g., working at home or staying after hours at the office).

2. All Work Must be Counted as Hours Worked

The general rule is that if the LDSS knows or has reason to believe that an employee is performing work, the time must be recorded as hours worked whether the employee volunteered to perform the work or was just dropping something off on the way home. Accordingly, employees cannot “volunteer” their time to perform extra duties or duties outside normal work hours without reporting them as hours worked.

a. Work Activities

Activities that are generally considered “work” may include:

- (1) Waiting time if the employee cannot use the time effectively for his or her own purposes such as when an employee is not relieved of all duties (e.g., “listen for the phone while you are waiting”);
- (2) Rest or break periods of 15 minutes or less;
- (3) Meal breaks of less than 30 minutes;
- (4) Time the employee sleeps while on duty provided that it is less than 24 hours in a day;
- (5) Pre-shift and post-shift activities required by the LDSS;
- (6) Required training;
- (7) LDSS required medical examinations;
- (8) Grievance activity;
- (9) Time actually worked while on call; and
- (10) All activities performed for the benefit of the employer during regularly scheduled hours (e.g., travel to work locations or training). Note: that a

Chapter 2 – Classification & Compensation

determination is always very fact specific and broad generalizations as to what time is compensable cannot be made lightly.

b. Non-work Activities

Activities that are related to a job but are not considered work include:

- (1) Time spent in civic and charitable activities (if not under the employer's request or direction);
- (2) Voting time;
- (3) On-call time if the employee's activities while on call are not unduly restricted;
- (4) Home to work travel;
- (5) Time spent waiting to work; and
- (6) Breaks of longer than 15 minutes and meal breaks longer than 30 minutes if the employee is completely relieved of all duties.

c. Volunteered Labor

As well intended as it may be, a non-exempt employee cannot "volunteer" time to work beyond scheduled work hours. Nor should an employee change the hours worked without permission of the supervisor.

3. Hours Actually Worked

Hours actually worked do not include time spent in non-compensable activities such as on-call or rest times or break periods of more than 15 minutes. It also does not include the following special situations:

a. Occasional and Sporadic Work for Same LDSS

All employment for the same LDSS, whether in one or more capacities, counts towards the hours worked. For public employers there is an exception when the additional work is part-time, occasional or sporadic, is different than the primary work, and done on a voluntary basis – e.g., a family services specialist being hired by the county recreation program to referee sporting events or to drive the school bus for a field trip.

Chapter 2 – Classification & Compensation

b. Lectures and Training Time

If the time is outside normal work hours and the program is not directly related to the employee's job, such time will not count as hours worked provided that attendance was voluntary and no work for the LDSS was performed.

c. Paid Time Off

Paid time off does not count as hours worked.

4. Travel Time

Time expended during the regular work schedule in travel and any time during which the employee is performing work, including the "work" of driving, must be counted as hours worked for both minimum wage and overtime computation purposes.

a. Travel During Work Hours

Travel and related activities on regular working days during normal working hours as well as travel and related activities occurring during corresponding hours on non-working days is work time.

Example: If an employee's regular work hours are from 9 a.m. to 5 p.m., Monday through Friday, travel time spent between 9 a.m. and 5 p.m. on any day of the week, including Saturday and Sunday, must be considered as hours worked.

b. Overnight Travel

When attending a meeting or business function overnight, only the hours that correspond to normal working hours and any additional time spent in meetings or business functions are counted as hours worked. Meals, receptions, social events are not hours worked unless attendance is required or work is performed.

- (1) Travel time away from home which occurs outside regular working hours is not counted as hours worked if the employee is a passenger on an airplane, train, boat, bus, other common carrier, or as a passenger in an automobile.

Example: If a non-exempt employee who normally works 9:00 a.m. to 5:00 p.m., Monday through Friday, is required to travel by plane on Sunday night in order to be at an out-of-town meeting on Monday morning, the travel time is not counted as hours worked.

- (2) If a non-exempt employee elects to drive to an overnight assignment instead of using offered public transportation, the LDSS has the option of

Chapter 2 – Classification & Compensation

counting as hours worked the lesser of the actual time spent by the employee in driving or the time that would have been expended if the employee used public transportation.

5. Recording Hours Worked

It is the responsibility of the LDSS to record all time actually worked and to maintain the records required under the FLSA. Although the LDSS can require the non-exempt employee to record his or her hours worked, the employee's failure to do so does not relieve the LDSS of the responsibility to record such time. Hours worked may be recorded in as small an increment as time records are kept; e.g., by fifteen minutes. Rounding to the nearest increment is permissible, provided it is done consistently in the same manner.

C. Overtime (see Section III for FLSA exemption information)

1. Overtime Pay

For each hour worked over forty hours in a workweek, a non-exempt employee receives overtime pay in the amount of 1.5 times the regular rate of pay. An exempt employee is not entitled to overtime pay or compensatory time.

2. Calculating Regular Rate of Pay

The regular rate of pay equals the employee's total weekly pay divided by the total hours worked. If an employee is paid an hourly rate, that regular rate is generally the same as the hourly rate; but if additional compensation is provided, e.g., extra payment for being on call, that compensation must be added to the total weekly compensation.

For salaried employees, the regular rate of pay is the salary divided by the number of hours that the salary is intended to compensate. The FLSA allows other methods of compensation, such as a fixed salary for fluctuating hours of work that would affect the amount of the regular rate of pay. If an LDSS has a lot of overtime, these alternative methods of salary payments may be used.

3. Compensatory Time

At the option of the local director and prior to overtime hours worked, a non-exempt employee may elect to receive compensatory time in lieu of overtime pay. Compensatory time is earned at the same rate as overtime pay - 1.5 hours for each hour of overtime worked.

Chapter 2 – Classification & Compensation

D. Exempt Status

1. The FLSA exempts certain employees, and provides partial exemptions to others (e.g., firefighters, law enforcement personnel, and hospital workers), from the overtime and minimum wage provisions of the Act. Although an employee may perform duties that would allow them to be exempt, an LDSS may for any reason elect to treat the position as non-exempt.
2. Employees may be exempt from overtime and minimum wage under one of the three “white collar” exemptions: executive, administrative, and professional employees. There are three requirements for meeting one of the white collar exemptions:
 - a. The employee must be paid a salary of at least \$455 per week.
 - b. Deductions from the salary for quantity or quality of work, or for less than full day disciplinary suspensions are not allowed.
 - c. The duties performed must comply with the regulations for each exemption. Job titles are not determinative of exempt status; actual job duties are the sole determinative.

E. Violations

An employee who believes that the LDSS has taken an action or has a practice that violates the FLSA, may bring a complaint to the local director. That complaint will be investigated and if it should be determined that an error or illegal practice has occurred, a correction will be made. Any compensation that may be due the employee will be promptly paid. Employees are protected against retaliatory actions when bringing such a complaint. A non-probationary employee may also initiate a grievance to challenge a violation of the FLSA.

Chapter 2 – Classification & Compensation

[This page intentionally left blank.]

Chapter 2 – Classification & Compensation

Section III Guidance for Determining FLSA Exemption Status of Employees

The Fair Labor Standards Act, as amended, provides an exemption from minimum wage and overtime requirements for any employee employed in a bona fide executive, administrative, or professional capacity. The Act also provides an exemption from the minimum wage and overtime requirements for computer systems analysts, computer programmers, software engineers, and other similarly skilled computer employees.

A. Responsibilities

It is the responsibility of each local director, in consultation with their local board, to determine whether employees are exempt or non-exempt under the Act and including provisions for employees of public agencies (see Chapter 2, Section III.E.5).

A job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the Act.

The following is presented as guidance for purposes of assisting LDSS agencies.

B. Tests for Determining Exemption under FLSA

1. Summary Requirements

- a. The employee must be paid on a salary or fee basis.
- b. The salary level must equate to at least \$455.00 per week.
- c. The job's "primary duties" must be the performance of exempt work.

2. Salary Basis

As a general rule, an employee is considered to be paid on a "salary basis" within the meaning of the regulations if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Typically, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work. An employee is not paid on a salary basis if deductions from the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

Chapter 2 – Classification & Compensation

Exceptions: The prohibition against deductions from pay in the salary basis requirement is subject to the following exceptions:

- a. Deductions from pay may be made when an exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability. Thus, if an employee is absent for two full days to handle personal affairs, the employee's salaried status will not be affected if deductions are made from the salary for two full-day absences. However, if an exempt employee is absent for one and a half days for personal reasons, the employer can deduct only for the one full-day absence.
- b. Deductions from pay may be made for absences occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. The employer is not required to pay any portion of the employee's salary for partial day absences for which the employee does not receive compensation under the plan, policy or practice (e.g., leave without pay status). Deductions for such absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance hereunder. Thus, for example, if an employer maintains a short-term disability insurance plan providing salary replacement for 12 weeks starting on the fourth day of absence (or sick leave benefits), the employer may make deductions from pay for the three days of absence before the employee qualifies for benefits under the plan (or has accrued sick leave); for the twelve weeks in which the employee receives salary replacement benefits under the plan; and for absences after the employee has exhausted the 12 weeks of salary replacement benefits. Similarly, an employer may make deductions from pay for partial day absences if salary replacement benefits are provided under a State disability insurance law or under a State workers' compensation law.
- c. While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, attendance as a witness or temporary military leave, the employer can offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption.
- d. Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines.
- e. Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a

Chapter 2 – Classification & Compensation

written policy applicable to all employees. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for twelve days for violating a generally applicable written policy prohibiting workplace violence.

- f. An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement. However, employees are not paid on a salary basis within the meaning of these regulations if they are employed occasionally for a few days, and the employer pays them a proportionate part of the weekly salary when so employed.
- g. An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, when an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works 40 hours per week uses four hours of unpaid leave under the Family and Medical Leave Act, the employer could deduct 10 percent of the employee's normal salary that week.

C. Primary Duty - Exempt Employee

An employee's "primary duty" must be the performance of exempt work. The term "primary duty" means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Factors to consider when determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of non-exempt work performed by the employee.

- 1. The amount of time spent performing exempt work can be a useful guide in determining whether exempt work is the primary duty of an employee. Thus, employees who spend more than 50 percent of their time performing exempt work will generally satisfy the primary duty requirement. Time alone, however, is not the sole test, and nothing in this section requires that exempt employees spend more than 50 percent of their time performing exempt work. Employees who do not spend more than 50 percent of their time performing exempt duties may nonetheless meet the primary duty requirement if the other factors support such a conclusion.

Chapter 2 – Classification & Compensation

2. Thus, for example, assistant managers in a retail establishment who perform exempt executive work such as supervising and directing the work of other employees, ordering merchandise, managing the budget and authorizing payment of bills may have management as their primary duty even if the assistant managers spend more than 50 percent of the time performing nonexempt work such as running the cash register. However, if such assistant managers are closely supervised and earn little more than the nonexempt employees, the assistant managers generally would not satisfy the primary duty requirement. The position description and the performance evaluation are two primary documents to support what activities are deemed to be primary.

D. Exempt Status

1. General Rule for Executive Employees

- a. Compensated on a salary basis at a rate of not less than \$455 per week, exclusive of board, lodging or other facilities;
- b. Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;
- c. Who customarily and regularly directs the work of two or more other employees; and
- d. Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.

2. General Rule for Administrative Employees

- a. Compensated on a salary or fee basis at a rate of not less than \$455 per week, exclusive of board, lodging or other facilities;
- b. Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- c. Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

3. General Rule for Professional Employees

- a. Compensated on a salary or fee basis at a rate of not less than \$455 per week, exclusive of board, lodging, or their facilities; and
- b. Whose primary duty is the performance of work:

Chapter 2 – Classification & Compensation

- (1) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or
- (2) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

4. General Rule for Computer Employees

- a. Exemption applies to any computer employee compensated on a salary or fee basis at a rate of not less than \$455 per week, exclusive of board, lodging or other facilities, and the exemption applies to any computer employee compensated on an hourly basis at a rate not less than \$27.63 an hour. In addition, under the Act, the exemptions apply only to computer employees whose primary duty consists of:
 - (1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - (2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
 - (3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
 - (4) A combination of the aforementioned duties, the performance of which requires the same level of skills.

5. Highly Compensated Employees

- a. An employee with total annual compensation of at least \$100,000 is deemed exempt under the Act if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee.
- b. "Total annual compensation" must include at least \$455 per week paid on a salary or fee basis. Total annual compensation may also include commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period. Total annual compensation does not include board, lodging and other facilities, and does not include payments for medical insurance, payments for life insurance, contributions to retirement plans and the cost of other fringe benefits.

Chapter 2 – Classification & Compensation

- c. This area of the Act applies only to employees whose primary duty includes performing office or non-manual work. Thus, for example, non-management production-line workers and non-management employees in maintenance, construction and similar occupations is not applicable.

E. Discussion of Some Terminology Used Throughout the Act

1. Customarily and Regularly

The phrase “customarily and regularly” means a frequency that must be greater than occasional but which, of course, may be less than constant. Tasks or work performed “customarily and regularly” includes work normally and recurrently performed every workweek; it does not include isolated or one-time tasks.

2. Directly and Closely Related to Management or General Business Operations

Work that is “directly and closely related” to the performance of exempt work is also considered exempt work. The phrase “directly and closely related” means tasks that are related to exempt duties and that contribute to or facilitate performance of exempt work. Thus, “directly and closely related” work may include physical tasks and menial tasks that arise out of exempt duties, and the routine work without which the exempt employee's exempt work cannot be performed properly. Work “directly and closely related” to the performance of exempt duties may also include recordkeeping; monitoring and adjusting machinery; taking notes; using the computer to create documents or presentations; opening the mail for the purpose of reading it and making decisions; and using a photocopier or fax machine. Work is not “directly and closely related” if the work is remotely related or completely unrelated to exempt duties.

3. Use of Manuals

The use of manuals, guidelines or other established procedures containing or relating to highly technical, scientific, legal, financial or other similarly complex matters that can be understood or interpreted only by those with advanced or specialized knowledge or skills does not preclude exemption under the Act or where such manuals and procedures provide guidance in addressing difficult or novel circumstances and thus use of such reference material would not affect an employee's exempt status. Exemptions are not available, however, for employees who simply apply well-established techniques or procedures described in manuals or other sources within closely prescribed limits to determine the correct response to an inquiry or set of circumstances.

4. Trainees

The executive, administrative, professional, outside sales and computer employee exemptions do not apply to employees training for employment in an executive,

Chapter 2 – Classification & Compensation

administrative, professional, outside sales or computer employee capacity who are not actually performing the duties of an executive, administrative, professional, outside sales or computer employee.

5. Employees of Public Agencies

An employee of a public agency who otherwise meets the salary basis requirements shall not be disqualified from the exemption on the basis that such employee is paid according to a pay system established by statute, ordinance or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by an employee because:

- a. Permission for its use has not been sought or has been sought and denied;
- b. Accrued leave has been exhausted; or
- c. The employee chooses to use leave without pay.

Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

6. “Customarily Recognized Department or Subdivision”

The phrase “a customarily recognized department or subdivision” is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. A customarily recognized department or subdivision must have a permanent status and a continuing function.

7. Two or More Other Employees

To qualify as an exempt executive, the employee must customarily and regularly direct the work of two or more other employees. The phrase “two or more other employees” means two full-time employees or their equivalent. One full-time and two half-time employees, for example, are equivalent to two full-time employees. Four half-time employees are also equivalent.

8. Particular Weight

To determine whether an employee's suggestions and recommendations are given “particular weight,” factors to be considered include, but are not limited to, whether it

Chapter 2 – Classification & Compensation

is part of the employee's job duties to make such suggestions and recommendations; the frequency with which such suggestions and recommendations are made or requested; and the frequency with which the employee's suggestions and recommendations are relied upon. Generally, an executive's suggestions and recommendations must pertain to employees whom the executive customarily and regularly directs. It does not include an occasional suggestion with regard to the change in status of a co-worker. An employee's suggestions and recommendations may still be deemed to have "particular weight" even if a higher level manager's recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee's change in status.

9. Concurrent Duties

Concurrent performance of exempt and nonexempt work does not disqualify an employee from the executive exemption if the requirements are met. Generally, exempt executives make the decision regarding when to perform nonexempt duties and remain responsible for the success or failure of business operations under their management while performing the nonexempt work. In contrast, the nonexempt employee generally is directed by a supervisor to perform the exempt work or performs the exempt work for defined time periods. An employee whose primary duty is ordinary production work or routine, recurrent or repetitive tasks cannot qualify for exemption as an executive.

10. Discretion and Independent Judgment

To qualify for the administrative exemption, an employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term "matters of significance" refers to the level of importance or consequence of the work performed.

The phrase "discretion and independent judgment" must be applied in light of all the facts involved in the particular employment situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the

Chapter 2 – Classification & Compensation

company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

The exercise of discretion and independent judgment implies that the employee has authority to make an independent choice, free from immediate direction or supervision. However, employees can exercise discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level. Thus, the term "discretion and independent judgment" does not require that the decisions made by an employee have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. For example, the policies formulated by the credit manager of a large corporation may be subject to review by higher company officials who may approve or disapprove these policies. The management consultant who has made a study of the operations of a business and who has drawn a proposed change in organization may have the plan reviewed or revised by superiors before it is submitted to the client.

F. FLSA Recordkeeping Requirements

The FLSA requires employers to keep records on wages, hours, and other items; these records do not have to be kept in any particular form and time clocks are not required to be used.

1. The Following Records Must Be Kept for Non-Exempt Employees

- a. When non-exempt employees are not on a fixed and regularly recurring work schedule:
 - personal information, including employee's name, home address and zip code, occupation, sex, and birth date if under 19 years of age;
 - hour and day when workweek begins;
 - hour and day when workweek ends;
 - total hours worked each workday and each workweek;
 - total daily or weekly straight-time earnings;

Chapter 2 – Classification & Compensation

- regular hourly pay rate for any week when overtime is worked;
 - total overtime pay or compensatory time for the workweek;
 - deductions from or additions to wages;
 - total wages paid each pay period ;
 - date of payment and pay period covered; and
 - amount and nature of each payment excluded from regular rate of pay.
- b. If a non-exempt employee is on a fixed work schedule the following simplified record keeping process may be used: records of daily and weekly hours worked are not required if the employer shows the fixed schedule of daily and weekly hours and indicates on the weekly time sheet either:
- that a check mark for the days and weeks that the schedule was adhered to; or
 - for the weeks that the schedule was not adhered to, the record shows the exact number of hours worked each day and each week.

2. The Following Records Must be Kept for Exempt Employees

- a. personal information, including employee's name, home address and zip code, occupation, sex, and birth date if under 19 years of age;
- b. hour and day when workweek begins;
- c. hour and day when workweek ends;
- d. total hours worked each workday and each workweek;
- e. total wages paid each pay period;
- f. date of payment and the pay period covered by each payment;
- g. the basis on which wages are paid with sufficient detail to calculate total remuneration received including fringe benefits, e.g., \$3,500 per month plus retirement and health plan coverage; and

Chapter 2 – Classification & Compensation

G. Comparison of Compensatory and Special Duty Leave

Policy Aspects	Special Duty Leave	Compensatory Leave
Employees to whom policy applies:	All employees.	Employees who are non-exempt.
Definitions:	Paid time off for an employee who has worked additional hours in a workweek, on an official office closing day, holiday, scheduled day off, or when a holiday falls on an employee's scheduled day off.	Paid time off for a non-exempt employee who actually works more than 40 hours in a workweek.
Purpose:	To provide additional compensation to employees who have worked additional hours in a workweek.	To compensate non-exempt employees with paid leave in lieu of overtime pay for working more than 40 hours in a workweek.
Number of hours worked in order to be eligible for leave:	N/A	More than 40 hours in a workweek
Rate of leave accrual:	Hour-for-hour basis	One and one-half hours for each hour or part thereof worked over 40 hours in a workweek
Duration of leave accruals:	Expires within 12 months from the date it is earned.	Does not expire
Maximum amount of leave accrual:	No maximum amount.	240 hours (or lesser limit, if established by LDSS)
Authorizations for leave accrual:	An employee must have agency approval, in writing, before earning special duty leave.	An employee must receive approval from the agency regarding the scheduling/working of overtime hours. However, if the overtime hours are worked, the employee must be compensated.
Payment on termination:	For special duty leave that has not expired, full lump sum payment.	Full lump sum payment
Payment when moving to different LDSS	For special duty leave that has not expired, full lump sum payment.	Full lump sum payment
Payment when moving to different position, same	No payment. Employee will retain his/her accrued leave.	No payment. Employee will retain the accrued leave

Chapter 2 – Classification & Compensation

Policy Aspects	Special Duty Leave	Compensatory Leave
LDSS:		
Payment upon employee's death:	Lump sum payment to the administrator or the executor of the employee's estate.	Lump sum payment to the administrator or the executor of the employee's estate
Rate of payment:	Special duty leave must be paid at the employee's ending average hourly pay rate.	Compensatory leave balances must be paid at the employee's ending hourly pay rate or the employee's average hourly pay rate over the last three continuous years of employment, whichever is higher

Chapter 2 – Classification & Compensation

H. Computing Compensatory and Special Duty Leave

Scenario 1: A non-exempt salaried employee worked the following schedule during the workweek September 1– September 7. Monday was a holiday (Labor Day), and the employee did not work any hours on that day. The employee’s timesheet would look as follows:

Day	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Total Hrs Worked
Date	Sep 1	Sep 2	Sep 3	Sep 4	Sep 5	Sep 6	Sep 7	
No. of Hours Actually Worked	Holiday 0	8	8	8	8	0	0	32

Compensation calculation: 32 hours were actually worked; accordingly the employee would receive full salary for that week because Monday was a holiday.

Scenario 2: A non-exempt salaried employee worked the following schedule during the workweek of September 1- September 7. The employee actually worked 8 hours on the holiday. The employee’s timesheet would look as follows:

Day	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Total Hrs Worked
Date	Sep 1	Sep 2	Sep 3	Sep 4	Sep 5	Sep 6	Sep 7	
No. of Hours Actually Worked	8	8	8	8	8	0	0	40

Compensation calculation: 40 hours were actually worked. Accordingly, the employee would receive full salary plus 8 hours of special duty leave for working on the holiday.

Scenario 3: A non-exempt salaried employee worked the following schedule during the workweek September 1 – September 7. The employee actually worked 8 hours on the holiday. In addition, the employee was on call on Saturday and Sunday and was called out for 2 hours on each day. The employee’s timesheet would look as follows:

Day	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Total Hrs Worked
Date	Sep 1	Sep 2	Sep 3	Sep 4	Sep 5	Sep 6	Sep 7	
No. of Hours Actually Worked	Holiday 8	8	8	8	8	2	2	44

Compensation calculation: 44 hours were actually worked; accordingly the employee would receive full salary for Monday through Sunday and 8 hours of special duty leave for working on Monday, a holiday. In addition, the employee worked 4 hours of overtime. Six hours of overtime compensation would also be due (pay or compensatory leave at the rate 1.5 hours for each hour actually worked).

Chapter 2 – Classification & Compensation

Scenario 4: A non-exempt salaried employee worked the following schedule. There are no holidays in this particular workweek. The employee's timesheet would look like the following:

Day	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Total Hrs Worked
Date	Sep 1	Sep 2	Sep 3	Sep 4	Sep 5	Sep 6	Sep 7	
No. of Hours Actually Worked	8	8	8	8	8	0	0	40

Compensation calculation: The employee actually worked 40 hours and therefore would be entitled to full salary.

Scenario 5: A non-exempt salaried employee worked the following schedule. The employee called in sick on Monday and worked eight hours on the weekend. The employee's timesheet would look as follows:

Day	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Total Hrs Worked
Date	Sep 1	Sep 2	Sep 3	Sep 4	Sep 5	Sep 6	Sep 7	
No. of Hours Actually Worked	Sick 8	8	8	8	8	4	4	40

Compensation calculation: 40 hours were actually worked; accordingly, no overtime compensation is owed. Because the employee worked 8 hours on the weekend, 8 hours of special duty leave, or straight time compensation, is owed for these hours worked.

Scenario 6: A non-exempt salaried employee worked the following schedule. There are no holidays in this particular workweek and the employee did not use any sick or annual leave. The employee's timesheet would look like the following:

Day	Mon	Tues	Wed	Thur	Fri	Sat	Sun	Total Hrs Worked
Date	Sep 1	Sep 2	Sep 3	Sep 4	Sep 5	Sep 6	Sep 7	
No. of Hours Actually Worked	8	8	8	8	8	4	4	48

Compensation calculation: 48 hours were actually worked; accordingly, the employee is to receive full salary plus 12 hours of overtime compensation (either pay or compensatory leave calculated at 1.5 hours for each hour worked - 8 overtime hours equals 12 hours of compensation).

Chapter 2 – Classification & Compensation

I. Certification of Exempt Employees

Each LDSS must submit to VDSS HR a certification that all positions have been reviewed to determine whether the positions within the agency are exempt from the FLSA overtime requirements.

Chapter 2 – Classification & Compensation

[This page intentionally left blank.]

Chapter 2 – Classification & Compensation

Section IV Compensatory Leave

Purpose

The purpose of this policy is to provide procedures for earning and accumulating paid leave which is given in lieu of payment for overtime hours worked.

Scope

This policy applies to all non-exempt employees who are entitled to overtime compensation for hours worked.

A. Definitions

1. Exempt Employee

An employee who is not subject to the overtime provisions of the Fair Labor Standards Act (FLSA). Exempt employees are bona fide executive, administrative, computer, or professional employees paid on a salaried basis.

2. Non-Exempt Employee

An employee who is subject to the overtime provisions of the Fair Labor Standards Act.

3. Overtime

Hours actually worked over 40 hours in a 7 day work period. Paid time off does not count as hours worked.

4. Compensatory Leave

Paid time off given in lieu of cash payments.

5. Workweek

A fixed and regularly recurring period of 168 hours or seven consecutive 24-hour periods that is established by the LDSS; the workweek may be uniform for all employees or it may differ for different positions or employees. The workweek does not have to coincide with the calendar week, but instead it may begin on any day of the week and at any hour of the day. The LDSS establishes the workweek for each position.

Chapter 2 – Classification & Compensation

B. Purpose of Compensatory Leave

1. Eligibility

A non-exempt employee who actually works more than 40 hours in any work week may elect to receive compensatory leave instead of overtime compensation with approval of the employee's supervisor.

2. Alternative to Cash Payment

Compensatory leave is given in lieu of a monetary payment for overtime compensation.

3. Agreement to Receive Compensatory Leave

Agencies using compensatory leave rather than monetary payments must obtain the written agreement of the employee prior to the performance of the overtime work. The agreement must state that compensatory leave will be received in lieu of overtime pay, that compensatory time may be used, preserved, or cashed out by the LDSS, and that no more than 240 hours (or fewer hours if such limit was established by the LDSS) of compensatory leave may be accrued at any period of time. Once an employee has accrued 240 hours of compensatory leave, the employee must receive pay for additional hours worked.

4. Overtime Hours Worked Require Approval by the Supervisor

Employees are not expected to work beyond their scheduled hours without the prior approval of a supervisor.

- a. If for any reason, an employee is held over (works beyond the end of his or her schedule) the employee is to notify the supervisor and at the election of the LDSS, the employee's schedule may be adjusted during that workweek in order to avoid overtime hours.
- b. Only on rare occasions may an employee work overtime without the approval of the supervisor.
- c. If an employee fails to promptly notify the supervisor or if there is a pattern of working overtime without approval, the employee may be disciplined.
- d. Whether approval was received and/or discipline given, the employee will receive compensatory leave or overtime pay for the overtime hours worked.

Whether monetary payments are made or compensatory leave given, the compensation shall be at 1.5 for each hour of overtime worked.

Chapter 2 – Classification & Compensation

C. Accrual of Compensatory Leave

1. Rate of Compensatory Leave

The rate of compensatory leave is one and one-half hours of leave for every hour actually worked over 40 hours in any workweek.

2. Maximum Amount of Accrued Compensatory Leave

The maximum amount of compensatory leave that an employee may accrue is 240 hours; when that amount is reached, the employee must be paid cash for all overtime hours worked. An LDSS, however, may establish a lesser maximum amount of compensatory leave that an employee is allowed to accrue.

3. Duration of Compensatory Leave

Compensatory leave does not expire.

4. Cashing Out of Compensatory Leave

The LDSS may cash out compensatory leave in whole or in part at any time at its sole discretion. Payment for compensatory leave must be at the employee's current regular rate of pay or at the average regular rate of pay for the past three years, whichever is greater.

5. Adjusting Scheduling

To avoid overtime pay, the LDSS may adjust an employee's schedule during the workweek so that no overtime is worked.

D. Use of Compensatory Leave

1. Scheduling of Leave

The LDSS should attempt to approve the use of compensatory leave at the time requested by the employee but has discretion to approve leave for a different time if granting the requested leave would be unduly disruptive.

2. Requiring Use of Compensatory Leave

The LDSS may at any time require an employee to use compensatory leave in order to reduce the number of hours accrued.

E. Treatment of Leave upon Change of Status

1. Payment When Leaving the LDSS

Chapter 2 – Classification & Compensation

An employee shall be paid in a lump sum for unused accrued compensatory leave when employment is terminated.

2. Payment upon Employee's Death

Payment upon an employee's death shall be made to the Administrator or the Executor of the employee's estate. If there is no Administrator or Executor, payment shall go to the surviving spouse, or if none, to the next of kin in accordance with § 64.1-123 of the *Code of Virginia*. Payment may be held for 60 days.

3. Rate of Payment

Compensatory leave balances must be paid at the employee's ending average hourly rate of pay or the employee's average hourly rate of pay over the last three continuous years of employment, whichever is greater.

4. Retention of Accrued Compensatory Leave

When an employee is transferred, promoted, or demoted to another position within the same LDSS, the LDSS may cash out the accrued compensatory leave.

F. Violations

An employee who believes that the LDSS has taken an action or has a practice that violates the FLSA, he may bring a complaint to the Director. That complaint will be investigated and if it should be determined that an error or illegal practice has occurred, a correction will be made. Any compensation that may be due the employee will be promptly paid. Employees are protected against retaliatory actions when bringing such a complaint. A non-probationary employee may also initiate a grievance challenging a violation of the FLSA.

Chapter 2 – Classification & Compensation

Section V Special Duty Leave

Purpose

The purpose of this policy is to provide procedures for providing employees with paid leave as compensation for additional hours worked during specific times such as holidays.

Scope

This policy applies to all employees.

A. Definitions

1. Special Duty Leave

Paid time off when an employee is required to work on an official office closing day, a holiday, a scheduled day off, or when a holiday falls on an employee's scheduled day off. Special duty leave may in limited circumstances also be granted to an exempt employee when the employee works extra hours in a work week.

2. Exempt Employee

An employee who is not subject to the overtime provisions of the Fair Labor Standards Act.

3. Non-Exempt Employee

An employee who is subject to the overtime provisions of the Fair Labor Standards Act.

B. When Special Duty Leave May be Given

1. Types Of Work Eligible For Special Duty Leave

An employee may receive special duty leave when required to work hours that are not within the expected or assigned work hours. Examples are:

- a. Additional work in a workweek when such hours are not overtime hours;
- b. On a day when the office is closed, e.g., a weekend or in an emergency;
- c. On a holiday; or
- d. On a scheduled day off.

Chapter 2 – Classification & Compensation

2. Special Duty Leave Not Required Compensation

LDSS may, but are not required to, compensate employees for this extra work with special duty leave. Other forms of compensation may be given at the option of the LDSS.

C. Earning and Using Special Duty Leave

1. Earning Leave

a. Non-Exempt Employees

Special duty leave is to be given to non-exempt employees on an hour-for-hour basis for hours actually worked.

b. Exempt Employees

Exempt employees are paid a salary for as many hours of work as may be required to complete assigned responsibilities. Special duty leave is not to be given to exempt employees for hours worked to complete routine projects because special duty leave may be given only in circumstances when the employee is required by the Director to work outside of normal business hours (e.g. evenings, weekends, holidays or office closings).

2. Special Duty Leave Must be Used or It is Lost

Accrued special duty leave expires within 12 months from the date it is earned. In extenuating circumstances arising from LDSS needs and as approved by the local board, an LDSS may allow an employee to carry over some or all of the special duty leave balances and may provide a time period during which it must be used.

3. Use

Accrued special duty leave may be used for the same purposes as annual leave.

4. Cashing Out of Special Duty Leave

At any time that the LDSS determines, it may cash out special duty leave. When it is cashed out, it shall be paid hour for hour at the employee's current average hourly rate of pay.

Chapter 2 – Classification & Compensation

D. Special Duty Leave Must be Authorized

1. In Writing

Special duty leave cannot be earned unless it has been authorized in writing by the Director.

2. In Advance

Special duty leave must be authorized before the employee works the extra hours. However, if emergency conditions exist which make it impossible to authorize special duty leave in advance, written authorization should be obtained as soon as possible thereafter.

E. Treatment of Special Duty Leave upon Change of Status

1. Payment When Leaving the LDSS

An employee shall be paid in a lump sum for the unused special duty leave balances when employment terminates for any reason. This payment shall be allocated to an equivalent number of days for purposes of unemployment compensation benefits.

2. Payment upon Employee's Death

Upon an employee's death, payment for the accrued special duty leave balances shall be made to the administrator or the executor of the estate. If there is no administrator or executor, payment shall go to the surviving spouse, or if none, to the next of kin in accordance with § 64.1-123 of the *Code of Virginia*. Payment may be held for 60 days.

3. Rate of Payment

Each hour of special duty leave shall be paid at the employee's current average hourly rate of pay.

Chapter 2 – Classification & Compensation

[This page intentionally left blank.]

Chapter 2 – Classification & Compensation

Section VI Holidays

Purpose

The purpose of this policy is to notify employees of which days have been designated as observed holidays and the LDSS is closed.

Scope

This policy applies to all employees.

A. Days Observed as Holidays

1. Holidays

The following 12 paid holidays are observed by closing LDSS offices:

- New Year's Day (January 1)
- Lee Jackson Day (Friday preceding third Monday in January)
- Martin Luther King Day (third Monday in January)
- George Washington Day (Third Monday in February)
- Memorial Day (Last Monday in May)
- Independence Day (July 4)
- Labor Day (First Monday in September)
- Columbus Day (Second Monday in October)
- Veteran's Day (November 11)
- Thanksgiving Day (Fourth Thursday in November)
- The Friday following Thanksgiving
- Christmas Day (December 25)

2. Other Holidays

- a. Should the Governor declare an official holiday that is not among those listed above, the LDSS will be closed and such holiday shall be observed.

Chapter 2 – Classification & Compensation

b. If the local government has adopted alternative holiday observances, the LDSS may elect to follow the locally observed holidays. LDSS who have elected to deviate to their local jurisdiction's holiday policy must follow the local jurisdiction's Holiday schedule.

3. When Holidays Fall on a Weekend Day

An official holiday that falls on a Saturday will be observed on the preceding Friday. An official holiday that falls on a Sunday will be observed on the following Monday.

B. Compensation Issues

1. When Required to Work on a Holiday

Offices are closed on official holidays and generally work is not to be performed. However, there may be certain employees who because of the nature of their job are scheduled to work on a holiday. If an employee is scheduled to work on a holiday, the employee may receive in addition to salary or wages special duty leave or cash compensation on an hour for hour basis.

2. Effect of Leave without Pay Status

If an employee is not on paid status on the scheduled workday immediately before and immediately after the holiday, no salary will be received for the holiday.

C. Religious Observances

1. Reasonable Accommodation

The LDSS will make reasonable accommodation for the religious needs of employees unless the accommodation will result in undue hardship to the LDSS.

- a. If an employee requests time off to participate in religious observances that fall during normal work hours, reasonable efforts will be made to accommodate for the religious observance.
- b. Employees should request leave in advance of the religious holiday. The earlier the request is made, it will be easier for the LDSS to make an accommodation.
- d. If a full day absence creates an undue hardship, the LDSS will work with the employee to assure that reasonable time off will be given.
- d. If leave balances are insufficient to cover the absence, and the schedule for the work can be adjusted, the hours off are to be charged to leave without pay.

Chapter 2 – Classification & Compensation

Section VII Chapter Appendix - Forms and Notices

The following forms may be helpful in executing the components for Chapter 2:

Classification and Compensation

1. Jurisdiction Wide Self-Analysis Form
2. Certification of FLSA Exempt Status Form
3. Executive Employee Exemption
4. Administrative Employee Exemption
5. Professional Employee Exemption
6. Computer Employee Exemption

To locate the forms, refer to the HR Support – Local sections of SPARK.

Chapter 3 – Recruitment & Selection

Chapter 3 Table of Contents

Section

I.	General Principles and Employment Information	3
	A. Definitions	3
	B. General Principles.....	8
	C. Terms and Conditions of Employment	9
II.	Background and Records Checks.....	11
	A. Types of Background and Records Checks	11
	B. Use of Background and Records Checks	11
III.	Probationary Period.....	15
	A. Conditions for Probationary Status	15
	B. Rights and Benefits During Probationary Period.....	16
	C. Conclusion of the Probationary Status.....	17
IV.	Chapter Appendix - Guidelines and Forms.....	19

Chapter 3 – Recruitment & Selection

[This page is left intentionally blank.]

Chapter 3 – Recruitment & Selection

Section I General Principles and Employment Information

It is the objective of this policy to establish and promote recruitment and selection practices that cultivate an exceptional, diverse and well-trained workforce that is engaged in continuous learning and capable of meeting the mission of the Virginia Social Services System.

Purpose

The purpose of this policy is to ensure that the recruitment and selection process for employees is conducted efficiently and consistently; and that employees are hired without regard to race, color, religion, gender, age, national origin, disability, marital status, pregnancy, or political affiliation.

Scope

This policy applies to all current employees, applicants for employment, and contract employees (hereafter “Employee”). This policy also applies to interns and volunteers.

Application

Each LDSS must assure the fair and equitable application of the recruitment and selection process. Therefore, all aspects of this policy should be applied in an unbiased and impartial manner. Any hiring authority who knowingly disregards the requirements of this policy, or who is found to have deliberately misused this policy, shall be subject to disciplinary action up to and including termination.

A. Definitions

1. Active Application Period

The period of time during which an application for a specific position under recruitment by an agency may be considered.

2. Application Closing Date

Chapter 3 – Recruitment & Selection

The last date that a state application can be received by the recruiting agency in order for the applicant to be considered for the recruited position. The application must be received on that date by the close of business or other time specified by the agency in the posting notice.

3. Applicant Pool

All persons who apply by the application closing date for a specific position for which an agency is recruiting.

4. Background Check

Review of an individual's work and personal history to determine if a candidate is suitable for certain positions. Depending upon the nature of the position for which the candidate is being considered, types of background checks that may be conducted include:

- a) academic record and verification of licenses and certifications,
- b) employment history, including references,
- c) financial history,
- d) credit reports,
- e) criminal history,
- f) driving record,
- g) a fingerprint-based criminal history report, and/or
- h) other records or information related to the candidate's suitability for the position.

5. Bona Fide Occupational Qualification ("BFOQ")

A job qualification or requirement that is not necessarily based on merit, education, or experience, but that is necessary to the operation of a particular business and reasonably related to the performance of a particular job.

6. Competencies

The knowledge, skills and underlying behaviors that correlate with successful job performance and positively impact the success of the employee and the organization. Competencies emphasize the attributes and activities that are required for an organization to be successful. Competencies may be behavioral or technical.

Chapter 3 – Recruitment & Selection

7. Continuous Recruitment

A method of recruiting that allows agencies to receive and consider applications on an ongoing basis for those positions for which vacancies constantly exist or frequently recur.

8. Disabilities

A physical or mental impairment that substantially limits a major life activity.

9. Dual Incumbency

Hiring a candidate into a position that is occupied by another employee for a short period of time, normally 30 days or less:

- a. to allow for a period of orientation for the new employee before the current employee separates; or
- b. when the current employee is on leave (with or without pay) and a separation date has been established.

9. Fair Credit Reporting Act

A federal law that protects the privacy rights of individuals. Information obtained through certain background checks or investigations may be subject to the Fair Credit Reporting Act (FCRA).

10. Hiring Authority

The individual making the hiring decision.

11. Human Resources (“HR”)

The division within the Department of Social Services that assists local departments of social services with development, implementation and compliance with employment policies.

12. Job Announcement

A statement, posting notice, or advertisement that a position is to be filled.

Chapter 3 – Recruitment & Selection

13. Knowledge, Skill, Ability (“KSA”)

A component of a position’s qualification requirements, based in part on definitions in the federal “Uniform Guidelines on Employee Selection Procedures,” found in volume 29 of the Code of Federal Regulations at Part 1607, section 16.

a. Knowledge

A body of information applied directly to the performance of a function. It usually is information of a factual or procedural nature, which makes possible adequate performance of the work.

b. Skill

A present, observable competence to perform a learned psychomotor act.

c. Ability

A demonstrated competence to perform observable behavior, or a behavior that results in an observable product. Ability denotes current competence in doing specific job content actions; it does not denote a person’s capacity to acquire this competence, nor can it be inferred from years of experience. Those involved in the hiring process should take care not to confuse an ability, which is currently demonstrable, with an aptitude, which is the potential for acquiring an ability.

14. Open-Until-Filled Recruitment

A method of recruiting for hard-to-fill positions that allows agencies to receive and consider applications without deadline until the position has been filled.

15. Reasonable Accommodations

Modifications or adjustments in a work site program or job that make it possible for a qualified employee with a disability to perform the tasks

Chapter 3 – Recruitment & Selection

or duties required by the position or for an applicant to progress through the hiring process.

16. Recruitment Management System

The automated personnel system that identifies and publicizes positions covered under the Virginia Personnel Act for which the Commonwealth and local departments of social services are actively recruiting.

17. Recruitment

The process by which an agency seeks qualified candidates by posting or advertising a position that the agency intends to fill through a competitive selection process.

18. References

Information obtained from former employers, supervisors, co-workers or others regarding a candidate's work performance or behavior. This information is used by the hiring agency along with other information collected during the hiring process to determine the candidate's suitability for the advertised position, and ultimately to determine which candidate is best suited for employment.

19. Screening

The process of evaluating the qualifications of individuals in an applicant pool against established position qualifications to determine:

- a. which applicants in the pool meet minimum and/or preferred qualifications; and
- b. which applicants qualify for an interview based on agency selection criteria.

20. Selection

The result of the hiring process that identifies the applicant best suited for a specific position.

21. Selection Panel

Chapter 3 – Recruitment & Selection

The group of individuals (two or more) that interviews job applicants for selection or for referral to the hiring authority for selection.

22. Veteran

Any person who has received an honorable discharge and has (i) provided more than 180 consecutive days of full-time, active-duty service in the armed forces of the United States or reserve components thereof, including the National Guard, or (ii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs. (See Va. Code § 2.2-2903 [D].)

23. Work Profile

A written job description.

B. General Principles

The following principles apply to all aspects of this policy and for procedures and guidelines described herein.

1. Persons With Disabilities

- a. When requested, agencies must provide reasonable accommodation throughout the hiring process to applicants with disabilities who are being considered for employment.

2. Equal Employment Opportunity

- a. Each agency must take action consistent with the Equal Employment Opportunity policy in Chapter 1 to ensure that its recruitment and selection procedures are conducted without regard to race, color, religion, gender, age, national origin, disability, marital status, pregnancy, or political affiliation.
- b. Additional requirements, including Affirmative Action Plans, are needed when the employer is the recipient of federal funding. Refer to Chapter 1 for policy on Affirmative Action Plans.

Guidelines regarding pre-employment inquiries applicable to job application forms, pre-employment interviews, and any

Chapter 3 – Recruitment & Selection

other type of questioning of persons seeking employment are provided in the Chapter Appendix.

C. Terms and Conditions of Employment

For reliable and current information regarding the terms and conditions of employment for each category of employee, refer to Chapter 2, Classification and Compensation.

Chapter 3 – Recruitment & Selection

[This page is intentionally left blank.]

Chapter 3 – Recruitment & Selection

SECTION II BACKGROUND AND RECORD CHECKS

Purpose

The purpose of this policy is to provide procedures that will be used for the administration and use of background, criminal, and driving record checks.

Scope

This policy applies to all prospective and current employees, interns and volunteers.

A. Use of Background and Record Checks

There is a duty imposed on employers to avoid negligence in the hiring and retention of employees. A claim of negligence arises when an employee injures a co-worker or third party and a claim is made that the employer should not have hired or retained the employee because the employer knew or should have known that the employee posed a threat of harm to others. Therefore each LDSS should conduct a thorough and careful background check of applicants and be conscientious in its supervision of employees.

B. Types of Background Checks

1. Criminal Record

For each applicant, intern and volunteer, the LDSS may request a state and national criminal record check prior to employment; the criminal background record check may be requested for all employees at any time during the course of employment.

- a. If the criminal record reveals a conviction for, or arrest awaiting final disposition of the crimes set forth in § 63.2-1719 of the *Code of Virginia* (“barrier crimes”), the following may occur:
 - (1) A prospective employee, intern or volunteer will not be offered an employment, an internship, or volunteer position with the LDSS; or
 - (2) A current employee, intern or volunteer will be subject to termination if the criminal record reveals a conviction for crimes set forth § 63.2-1719 of the *Code of Virginia* (“barrier crimes”). If there is an arrest awaiting final disposition, the employee will be placed on leave without

Chapter 3 – Recruitment & Selection

pay and the intern or volunteer will be terminated. For current employees, an exception from termination may be made if the conviction is “old” and the employee has not shown any connection between work performance and the conviction.

For a list and description of “barrier crimes”, refer to the Chapter Appendix.

b. If the criminal record reveals a conviction for, or an arrest waiting final disposition, for a crime other than a “barrier crime” that is job related and may impact on the ability to perform the assigned duties:

(1) A prospective employee, intern or volunteer may not be offered employment or an internship or volunteer position with the LDSS if the crime is relevant (as to the criminal act, the date which such conviction occurred, the circumstances regarding the criminal conduct, etc.) to the performance of the particular job.

(2) An employee, intern or volunteer may be terminated if the crime is relevant (as to the criminal act, the date which such conviction occurred, the circumstances regarding the criminal conduct, etc.) to the performance of the particular job.

2. Driving Record

a. For each applicant, intern, volunteer, and employee whose position requires a driver’s license and/or who transports clients of the LDSS or who drives a motor vehicle as part of the position responsibilities, an LDSS may request a driving record check from the Virginia Department of Motor Vehicles or other state if the individual has resided in that state during the past seven years.

b. If the driving record reveals the presence of any negative points on the record, the prospective or current employee, intern or volunteer may not be offered a position.

3. Central Registry Record

a. A record check through the Virginia Department of Social Services’ Central Registry will be conducted on each prospective and/or current employee, intern or volunteer for founded complaints of abuse or neglect.

Chapter 3 – Recruitment & Selection

- b. If the record check reveals the presence of a founded complaint of abuse or neglect, the prospective employee, intern or volunteer will not be offered a position with the LDSS.
- c. If the record check reveals a founded complaint of abuse or neglect for any current employee, intern or volunteer, the current employee, intern or volunteer will be terminated from their position with the LDSS.

4. Other Background Checks

a. Credit History

For those positions that involve financial transactions or the disbursement of funds, a credit history records check may be conducted. An employee applying for or holding such a position may be required, at the discretion of the LDSS, to consent to such a records check. If the credit history is such that there is doubt or concern with the ability of the employee to exercise the fiduciary duties and obligations of the position with the highest degree of care or if the bonding agent declines to bond the individual, the applicant may not be hired, or the employee may be terminated.

b. Child Support History

For those positions which involve child support functions for the LDSS, a child support history records check may be conducted. Employees applying for or holding such positions may be required, at the discretion of the LDSS, to consent to such a records check. If the child support history is such that there is doubt or concern with the ability of the employee to exercise the duties and obligations of the position with the highest degree of care and objectivity, the applicant may not be hired, or the employee may be terminated.

Chapter 3 – Recruitment & Selection

[This page left intentionally blank.]

Chapter 3 – Recruitment & Selection

Section III Probationary Period

Purpose

The purpose of this policy is to set forth the requirements regarding probationary period and conditional status.

Scope

This policy applies to employees with regular, temporary and restricted status.

A. Conditions for Probationary Status

1. Required Probationary Period

The following employees must serve a probationary period:

- a. All new employees.
- b. Employees who are hired from another local LDSS or the Virginia Department of Social Services.
- c. Employees who are re-employed following more than a thirty (30) day break in service.

2. Probationary Period

- a. Every employee newly hired by a LDSS must serve a twelve-month probationary period. This probationary period may be extended by the LDSS to eighteen months when because of circumstances outside the employee's or the LDSS' control an extension serves the legitimate interest of the LDSS.
- b. The probationary period shall begin on the first day of employment or classification change. Temporary employment does not count in calculating the time period for probation.
- c. The probationary period must be extended for leaves of absence in excess of 14 calendar days. The extension is limited to an amount of time equal to the leave of absence.

Chapter 3 – Recruitment & Selection

- d. A separation for more than 30 days that is not on an approved leave is considered a break in service and a new probationary period must be served.
 - e. At the LDSS' option, an employee who has been unable to satisfactorily perform due to circumstances beyond the employee's control or due to a disability may have the probationary period extended for a period no greater than one-half the length of the original probationary period. Any such extension of the probationary period must be mutually agreed to by the employee and the Director prior to the end of the probationary period.
3. At-Will Employment

An employee who is on probationary status is employed as an at-will employee and should have no expectation of continued employment beyond the probationary period. During the probationary period an employee can be terminated for any reason with or without notice or cause.

B. Rights and Benefits During Probationary Period

- 1. Grievance Procedure
 - a. An employee does not have a right to use the grievance procedure during the period of probationary status.
- 2. Evaluation
 - a. It is the expectation that an employee's performance will be continually monitored and appropriate performance coaching provided throughout the probationary period. There is no formal process for such performance coaching.
 - b. A formal evaluation of the employee's performance must be completed at the end of the first eleven months of the probationary period. If the evaluation is satisfactory the employee will attain regular or restricted status (depending on whether they are in permanent or restricted positions) with the LDSS at the end of the twelve month probationary period.

Chapter 3 – Recruitment & Selection

- c. An unsatisfactory performance evaluation more than likely will result in the termination of the employee.

3. Benefits

An employee in probationary status has the same benefits as other employees in non-probationary status. Such benefits may include health plan participation, leave accrual, and retirement.

C. Conclusion of the Probationary Status

1. An employee must be notified when they move from probationary status to regular status or restricted status.
2. If an employee is to be terminated at the end of the probationary period, the reasons for such removal must be documented.

Chapter 3 – Recruitment & Selection

[This page left intentionally blank.]

Chapter 3 – Recruitment & Selection

Appendix I: Recruitment and Selection Guidelines and Forms

A. General Considerations

1. Health and Physical Condition

An applicant's disability cannot be considered in connection with the hiring process. The sole inquiry is whether the applicant can perform the essential functions of the job, with or without reasonable accommodation.

Although employers may not ask disability-related questions, i.e., questions that are likely to elicit information about a disability, or require medical examinations at the pre-offer stage, they may utilize a wide variety of assessment methods to evaluate whether an applicant is qualified for the job.

The law does not require that employers make accommodations for persons who are not "otherwise qualified". Therefore, the first step an employer should take is to determine whether the applicant is qualified for the position sought.

An individual with a disability is qualified for a job if, with or without reasonable accommodation, the individual can perform the essential functions of the job. If the applicant is qualified, the employer must then assess whether the accommodation is reasonable. Prior to making a job offer, an employer may inquire into the need for and type of reasonable accommodation required by an applicant only when the employer could reasonably believe that an applicant will need such accommodation to perform the functions of the job (e.g., an applicant who is in a wheel chair). If there is no obvious disability, an inquiry can only be made after a conditional offer of employment is made. An accommodation is reasonable if it is not an undue hardship for the employer or poses a serious safety risk. After reasonable accommodations have been identified and agreed upon, the most qualified applicant should be selected regardless of any disability or need for accommodation.

2. Age / Birth Date

The Age Discrimination in Employment Act of 1967 (ADEA) prohibits discrimination against individuals who are forty years old or older. Although asking for an applicant's date of birth does not per se violate the ADEA, such

Chapter 3 – Recruitment & Selection

a request may tend to either deter older applicants from applying or could permit a discriminatory inference of age discrimination if the applicant is not hired. Questions that indirectly reveal an applicant's age are also impermissible such as asking an applicant what year he or she graduated from high school or college. This information could be obtained after a conditional offer of employment is made.

3. Name / Marital Status

Discrimination based on sex is prohibited. An applicant's marital status may be considered gender specific information and may violate the law. Virginia law prohibits using marital status as criteria in making employment decisions. An inquiry as to an applicant's maiden name could be found to violate the law because it seeks to determine whether the applicant is married (it also elicits gender specific information).

4. Immigration Status

The Immigration Reform and Control Act (IRCA) prohibits intentional discrimination on the basis of national origin or citizenship status. The IRCA also requires employers to verify identity and work eligibility status of all new hires. Form I-9 must be completed for each newly hired employee, within three (3) days of hire. If the employer is unable to verify the identity and work eligibility of a new hire within three (3) business days of hire, the employee must be terminated.

In order to complete Form I-9, new employees must be provided with a list of acceptable documents as indicated on Form I-9. New employees must present original or certified copies of the documents to the employer for review, so that their identity and work eligibility status can be verified. Note that there are numerous forms of work visas and each has special limiting conditions. Therefore, two items must be checked: (1) type of work allowed and for whom; and (2) visa expiration date. If an applicant is not a citizen and is allowed to work on the visa, the employer should check to see if the work permission is limited to a particular employer or for a soon-to-expire time period. Copies of these documents and the Form I-9 should be retained in a separate confidential personnel file. A list of the types of visas is found in the appendix.

5. Veterans Preference

Chapter 3 – Recruitment & Selection

Preference in the hiring process shall be given to veterans. If an agency uses a scored test by which to evaluate applicants, veterans must receive a credit of an additional 5% of his or her score or, if the applicant is a veteran having a service-connected disability rating fixed by the United States Veteran's Administration, he or she must receive a credit of an additional 10% of his or her score. To be eligible for such an increase in score, the applicant must first achieve a passing score on the test or examination.

However, because most LDSS recruitments do not use scored tests, the challenge for agencies is to apply a preference that is equivalent to the 5% increase veterans receive on test scores (10% for veterans with a disability rating from the United States Veterans Administration). The following guidelines are designed to help agencies achieve this required level of preference.

Initial screening: Applicants are screened to identify those who meet the minimum requirements for the position – the equivalent of achieving a passing score on a test. No preference is given. Applicants must meet the required criteria at a minimum or better level on their own.

Preference applied after initial screening phase: After the initial screening, veteran status is noted for the candidates. The employment application provides preliminary notice of veteran status; the agency may need to follow up to identify the exact status of veteran applicants. At this stage, preference shall be given by treating veteran status as a preferred qualification. Further preference shall be given if the veteran applicant also has a service-connected disability rating by treating the veteran's disabled status as a second preferred qualification. Adding a preferred qualification criterion for veteran status and, if applicable, a second preferred criterion for disabled veteran status will therefore result in the veteran applicant and the disabled veteran applicant receiving the additional preference.

NOTE: Department HR advises that job postings and/or advertisements not state veteran and disabled veteran as preferred qualifications.

6. Affirmative Statement

The following statement should appear on all recruitment documents, including the recruitment announcement: "An Equal Opportunity/Affirmative Action Employer." It is advisable that recruitment materials assure that the LDSS is an equal opportunity employer. The LDSS does not discriminate on

Chapter 3 – Recruitment & Selection

the basis of race, religion, color, age, sex, marital status, national origin, alienage, citizenship, disability or any other federally protected status.

7. Pursuant to *Code of Virginia* § 2.2-2804, any person who has failed to meet the federal requirement for the Selective Service shall be ineligible for employment by or service for the Commonwealth, or a political subdivision of the Commonwealth, including all boards and commissions, departments, agencies, institutions, and instrumentalities. A person shall not be denied employment under this section by reason of failure to present himself for and submit to the federal registration requirement if: (a) the requirement for the person to so register has terminated or become inapplicable to the person and (b) if the person shows by a preponderance of the evidence that the failure of the person to register was not a knowing and willful failure to register.

Applicants who have not registered as required by *Code of Virginia* § 2.2-2804, must present verification from the Selective Service System that they have met the requirements of the *Code of Virginia*.

8. Work profiles

Work profiles should be developed for every position before the recruitment commences. This document is essential in screening applicants as well as engaging the applicant in a meaningful job-related discussion during the interview. This will also serve to protect the employer in the event the applicant is rejected or later discharged on the basis that the minimum qualifications for the position were not met. The job description should include:

- a. A job title which accurately describes the duties and the relative level of importance of the position. Do not give a job a more prestigious title than warranted to compensate for noncompetitive compensation.
- b. The name of the LDSS, whether the position is exempt or non-exempt under the FLSA, part-time or full time, regular, restricted, temporary or emergency position.
- c. The purpose of the job and how it fits into the mission of the organization.
- d. The essential functions of the job, including physical functions such as lifting, bending, or climbing.

Chapter 3 – Recruitment & Selection

- e. The specific job responsibilities, listing the most significant first (time spent or importance to the employer).
- f. The minimum qualifications for the position, including skills that are critical to successful job performance, and educational degrees, licenses and certifications that are required. Consider using "equivalent experience" as an alternative to a degree. These requirements must be job related.

B. Posting Positions To Be Filled

1. Initial Steps

Before posting positions, agencies should:

- a) analyze the vacant position and work unit to which it is assigned to determine if any changes have occurred;
- b) update the Work Profile to reflect current duties and responsibilities;
- c) determine the knowledge, skills, abilities/competencies (KSA) necessary or preferred for the position;
- d) determine if the position is assigned to the proper role and make role changes as necessary;
- e) identify any education qualifications required by law for the position;
- f) identify any BFOQs; and
- g) determine recruitment options.

2. Recruitment Options

Agencies should select the recruitment option that best fits their needs before posting a vacancy. The decision should be based on factors such as the diversity of the agency's workforce and the availability of qualified applicants.

If initial recruitment does not result in an adequate applicant pool, agencies may re-open recruitment as necessary.

Agencies may use one of five options when conducting recruitment:

Chapter 3 – Recruitment & Selection

a. Open

Recruitment is open to all applicants. Open recruitment announcements may be prepared by the LDSS or Department HR. When underutilization of minorities and females exists in the EEO-4 category of the position to be filled, the open Recruitment Announcement must be prepared by Department HR.

b. Intra-agency

Recruitment is limited to current regular, probationary, restricted, and temporary employees of the LDSS where the vacancy exists. Intra-agency recruitment may be used only if underutilization of minorities and females does not exist in the EEO-4 category of the position to be filled. Intra-agency recruitment announcements must be prepared by the LDSS.

c. Inter-agency

Recruitment is limited to current regular, probationary, restricted, and temporary employees of any State and local welfare/social services department of the Commonwealth of Virginia. Inter-agency recruitment may be used only if underutilization of minorities and females does not exist in the EEO-4 category of the position to be filled. Inter-agency Recruitment Announcements must be prepared by Department HR.

d. Intra-Jurisdictional

Recruitment is limited to employees of the city, town, or county government of which the LDSS is a governmental unit. Jurisdictional recruitment may be used only if underutilization of minorities and females does not exist in the EEO-4 category of the position to be filled. Jurisdictional recruitment announcements must be prepared by the LDSS.

e. Limited

Recruitment is limited to regular or probationary employees of either a specific unit or classification of the LDSS to prevent lay-off of an employee due to the abolishment/establishment of a position. Limited recruitment announcements must be prepared by the LDSS.

Chapter 3 – Recruitment & Selection

C. Job Announcement Requirements

1. Request to Advertise Position Form
 - a) A Request to Advertise Position form is prepared by the LDSS and must be received by Department HR no later than 2:00 PM on the Wednesday of the week proceeding the recruitment period. When recruitment is for more than one position with the same classification and position type (regular, temporary, or restricted; full-time or part-time), one form may be completed on which all position numbers are entered and then copies made. The LDSS shall indicate on the form the type of applicant screening (preliminary or complete) that is desired.
2. Submission of the Request to Advertise Position Form
 - a) When the LDSS elects to prepare and post the Recruitment Announcement, the completed Request to Advertise Position form shall be submitted to Department HR at the close of the deadline of the Recruitment Announcement posting period along with all applications, in alphabetical order, received for the position.

D. Posting Periods, Closing Date and Time, Extensions, and Adding Positions to Existing Certificates

1. Posting Periods
 - a. Open Recruitment

The Recruitment Announcement must be posted for a minimum of five workdays.
 - b. Intra-agency Recruitment

An intra-agency announcement must be posted a minimum of five workdays.
 - c. Inter-agency Recruitment

An inter-agency announcement must be posted a minimum of five workdays.
 - d. Jurisdictional

Chapter 3 – Recruitment & Selection

A jurisdictional announcement must be posted a minimum of five workdays.

e. Limited

A limited announcement must be posted a minimum of five workdays.

2. Closing Day and Time

- a. Recruitments undertaken by the LDSS may close on a day and at a time selected by the LDSS.
- b. Recruitments undertaken on behalf of the LDSS by Department HR will generally close on a Friday at noon. Holiday and inclement weather closings may necessitate changes in the closing day and time.

3. Extensions

An announcement posting period may be extended a minimum of five additional workdays at the discretion of the LDSS. Notification to Department HR must be received no later than 2:00 PM on the Wednesday preceding the original closing date.

4. Adding Positions to Existing Certificates

Similar vacancies (duties/work title, organizational unit, and geographic area) that become vacant, or funded, within 90 calendar days from the position closing date of the similar vacancy may be added to an existing certificate if requested by the hiring authority. The request must be made in writing and submitted to Department HR with a completed Request to Advertise Position form for the newly vacated/funded position. The LDSS may only consider applications in the applicant pool for the previously recruited position.

E. Recruitment Announcement and Newspaper Advertisement

All job announcements must include an Equal Employment Opportunity statement and should state the scope of the position and KSA qualification requirements. All information in the job announcement must be job related. Announcements must not specify a certain number of years of experience or a specific educational requirement unless sanctioned by law.

1. The following elements must be included:

Chapter 3 – Recruitment & Selection

- a. a summary of job duties
 - b. any educational qualifications required by law;
 - c. any bona fide occupational requirements (BFOQs);
 - d. any occupational certification or licensing required by law;
 - e. notification that a fingerprint-based criminal history check will be required of the finalist candidate for the position if it has been designated as sensitive under *Code of Virginia* § 2.2-1201.1;
2. Required Contents of the Recruitment Announcement and the Newspaper Advertisement
- a. Each Recruitment Announcement must contain the classification title; position number; salary range, entry salary, or hourly rate of pay; if part-time, hours per week; position location; statement about the type of recruitment for any position for which open recruitment is not being used; deadline date and time for receipt of applications; summary of duties and responsibilities; special requirements, if any; knowledge, skills, and abilities (KSAs) needed for entry into the position; any educational qualifications required by law; any BFOQs; notification that a fingerprint-based criminal history check will be required of the finalist candidate for the position; application instructions; complete mailing address for the LDSS; and a statement that the LDSS is an equal opportunity employer.
 - b. The newspaper advertisement, which is prepared by the LDSS, must contain the classification title; position number; salary range, entry salary, or hourly rate of pay; if part-time, hours per week; position location; statement about the type of recruitment for any position for which open recruitment is not being used; deadline date and time for receipt of applications; duties and responsibilities paragraph; application instructions; complete mailing address for the LDSS; and a statement that the LDSS is an equal opportunity employer.
 - c. The announcement, the newspaper advertisement, and all other recruitment materials should state that the LDSS is an EEO employer.
3. Restrictions on the Use of Required Qualifications
- The Recruitment Announcement and newspaper advertisement may include preferred qualifications, but unless a job analysis supports a specific requirement, the qualifications should not be set forth in terms so absolute as to discourage otherwise qualified applicants from applying or automatically preclude applicants from consideration.

Chapter 3 – Recruitment & Selection

a. Specific Years of Experience Prohibited

Except where required by law or State Board policy, the Recruitment Announcement and newspaper advertisement may not state a qualification of specific years of experience, but may state a qualification of related or applicable experience. It is the KSAs that an individual has no matter where or how obtained that are important.

b. Educational Qualifications

Except where required by law or State Board policy, the Recruitment Announcement and newspaper advertisement should not state absolute educational qualifications or use educational qualifications to preclude from consideration applicants who have equivalent or sufficient applicable experience or training.

c. Proficiency Levels

The Recruitment Announcement and newspaper advertisement may set forth proficiency levels that are reasonable and consistent with normal expectations of acceptable proficiency within the work force. An example of an acceptable proficiency level is a typing speed requirement for a secretarial position for which typing is a significant component.

d. Occupational Certification or License

The Recruitment Announcement and newspaper advertisement should state occupational certification or licensing that is required by law.

4. Approval for Bona Fide Occupational Qualifications (BFOQs)

A Recruitment Announcement or newspaper advertisement may not include a bonafide occupational qualification (BFOQ) as a qualification requirement without the approval of Department HR.

F. Application for Employment

An LDSS may require that a completed Application for Employment be submitted electronically, via the Recruitment Management System, mailed, faxed, or hand-delivered, for each Recruitment Announcement for which application for employment is being made. If the Recruitment Announcement is for more than one position, one application may be acceptable provided that

Chapter 3 – Recruitment & Selection

each position is listed. If the LDSS accepts applications via mail, fax or hand-delivery, a facsimile or photocopied application is acceptable; however, the photocopied application must be signed by the applicant at the time of interview. The position number(s) and location must be entered on the application. Attachments, including a resume, to the application form may not be considered during the screening process.

Applications received after the closing date cannot be considered.

G. The Selection Process (non-Recruitment Management System agencies)

Agencies may either interview all applicants for a position or reduce the applicant pool by screening applications. If the LDSS chooses to screen applications, it must choose one of two types of Department HR screening. The option selected is indicated on the Request to Advertise Position form.

1. Preliminary Screening
 - a. A Department HR consultant, using the Recruitment Announcement duties and responsibilities paragraph, entry level knowledge, skill, and ability statements shall screen all applications received.
 - b. A referral list of the names of all applicants who meet or exceed the minimum required qualifications for the position and their applications is sent to the LDSS for further evaluation.
 - c. Using the same criteria that the Department HR consultant used, the LDSS determines which applicants will be offered an interview. Whenever possible, no fewer than five or more than twenty applicants should be interviewed.

As a safeguard, Department HR reserves the right to monitor the LDSS' evaluation of applications. If it is determined that a LDSS' actions are not in compliance with acceptable evaluation practices, Department HR may withdraw the preliminary screening option.
 - d. An interview panel and/or the LDSS Director shall conduct the interviews.
 - e. After concluding the interviews and selecting an individual for the position, the LDSS shall send written notification of

Chapter 3 – Recruitment & Selection

application status to all applicants whose names were on the Referral List.

- f. The LDSS shall indicate the disposition status by each applicant's name on the Referral List and shall return the list and all applications to Department HR.

2. Department HR Completed Screening

- a. A Department HR consultant, using the duties and responsibilities paragraph of the Recruitment Announcement, entry-level knowledge, skill, and ability statements and special and preferred qualification(s) information, will evaluate all applications received.
- b. An Interview List of the names of applicants who most closely possess the required and desired qualifications for the position and their applications is sent to the LDSS.
- c. The LDSS must offer all applicants on the Interview List an opportunity to interview for the position.

If fewer than five applicants accept an interview appointment, the LDSS may immediately request a Supplementary Interview Authorization List. A list will be provided if there were additional applicants who met the minimum selection criteria. If there are no additional applicants, the position may be reposted.

- d. An interview panel and/or the LDSS Director shall conduct the interviews.
- e. After concluding the interviews and selecting an individual for the position, the LDSS shall send written notification to all applicants whose names were on the Interview List.
- f. The LDSS shall indicate the disposition status by each applicant's name on the Interview Referral List, and shall return the list and all applications to Department HR.

3. Application Re-evaluation

- a. Re-evaluation by Department HR
-

Chapter 3 – Recruitment & Selection

- (1) Any applicant whose name is not placed by Department HR on a Referral List, Interview List, or Supplemental Interview List for a particular position may request a re-evaluation of his application. The request must be submitted in writing to Department HR. It may be e-mailed, mailed or faxed.
- (2) A re-evaluation shall be performed by a Department HR consultant only if initial interviews, when a panel is being used, or final interviews, when only one interview is being held, have not been concluded.
- (3) The Department HR consultant will send written notification of the re-evaluation results to the applicant.
- (4) If the re-evaluation results in a change and if the LDSS initially selected the preliminary screening option, then another Referral List will be issued. The LDSS then shall determine if the applicant will be offered an interview. If the complete screening option was initially selected, then an Addendum List will be sent to the LDSS, which shall ensure that the applicant is offered an interview.

b. Re-Evaluation by the LDSS

- (1) Any applicant whose name was placed by Department HR on a Referral List for a particular position but who was not selected for an interview may request a re-evaluation of his or her application. The request must be submitted in writing to the LDSS. It may be mailed or faxed.
- (2) A re-evaluation shall be performed by the LDSS only if initial interviews, when a panel is being used, or final interviews, when only one interview is being held, have not been concluded.
- (3) The LDSS shall send written notification of the re-evaluation results to the applicant.
- (4) If the re-evaluation results in a change, the LDSS must offer an interview to the applicant.

4. Veterans Preference

Chapter 3 – Recruitment & Selection

- a. Consistent with the requirements of the *Code of Virginia* §§ 2.2-2903 and 15.2-1509, a veteran's military service shall be taken into consideration by the Commonwealth during the selection process, provided that such veteran meets all of the knowledge, skill, and ability requirements for the available position. Additional consideration shall also be given to veterans who have a service-connected disability rating fixed by the United States Veterans Administration.
 - b. Additionally, if the position is filled using a scored test or examination, the grade or rating of an honorably discharged veteran must be increased by 5% or by 10% if the veteran has a service-connected disability rating fixed by the United States Veterans Administration.
5. Interviewing
- a. The LDSS shall be responsible for ensuring that the interview process is fair and consistent.
 - b. The LDSS shall have the discretion of using selection panels to interview applicants in order to determine which applicants will be interviewed by the hiring authority.

Panel members shall become familiar with the basic responsibilities of the position for which they will interview applicants.

Panel members shall be in the same or higher grade than the position for which they will be conducting interviews.
 - c. An effort shall be made to contact by telephone (or in writing, if unable to reach by telephone) all applicants who have been determined eligible for an interview. However, the LDSS is not required to reschedule interviews with applicants who are unable to make the scheduled interview.
 - d. The LDSS and/or panel members shall develop a set of uniform interview questions to ask each applicant. The questions should allow the interviewer(s) an opportunity to seek information related directly to the knowledge, skills, and/or abilities necessary to perform the job.
-

Chapter 3 – Recruitment & Selection

Questions that are not job-related or that violate EEOC standards are not permissible.

The interviewer(s) may ask or answer questions in response to any statements or questions from the applicant or to clarify information provided by the applicant on the application.

- e. Interviewers must refrain from making any inquiry about an applicant's age, race, creed, color, national origin, sex, marital status, religion, or disability before, during or after employment unless there is a need to do so based on a bona fide occupational qualification.

Interviewers must be careful that their questioning, as well as their expressions and actions, cannot be construed to be discriminatory.

When an applicant volunteers information that might lead to an impermissible line of follow-up questions, the interviewer should refrain from being led into a discussion on impermissible topics. The interviewer should accept the information provided, advise the applicant that the information can not be used in making an employment decision and proceed to the "scripted" questions.

- f. Interviewers should be well trained with regard to acceptable and unacceptable types of questions. Further, interviewers should understand that their representations made to applicants may later bind the employer. It is particularly important to avoid "overselling" job security or making other sorts of guarantees.
- g. Interviewers must document applicants' responses to questions to assist with their evaluation of each candidate's qualifications. This information should be retained with other documentation of the selection process.
- h. The evaluation forms or notes used during interviews should not be retained in the employee's personnel file. They are to be retained by the LDSS in a separate file. Numerical scoring of an applicant's performance is discouraged in that it may be hard to quantify objectively and consistently.

Chapter 3 – Recruitment & Selection

i. Guidelines Based Upon ADA Provisions

Guidelines issued by the Equal Employment Opportunity Commission (EEOC) should be followed during the hiring process. These regulations recommend making reasonable accommodations in the application and during the interview process.

For example, interviews should be held at fully accessible locations. If tests are required, it is recommended that an employer give advance notice so that an applicant may request accommodation if necessary.

Tests that are job related and consistent with business necessity are the only tests that should be conducted. Such tests should be available in alternative forms.

Finally, applicants who are blind should be allowed to submit application information orally and applicants who are deaf should be provided with sign interpreters.

6. Reference Checks

a. The LDSS should check employment history with the current and former employer(s) of applicants who are final candidates for the position. Listed references should also be contacted.

b. The reference and employment checks should attempt to obtain information such as the following:

- 1) name and title of person giving reference;
- 2) verification of employment dates;
- 3) verification of position title;
- 4) verification of position duties;
- 5) verification of beginning and ending salaries;
- 6) training completed;
- 7) performance (work experience, KSA's, competencies);
- 8) whether the employer would rehire the applicant; and
- 9) verification of any license, certification or degree the applicant claims to possess.

Chapter 3 – Recruitment & Selection

It is extremely important to remember that an employer may not ask questions of third parties that could not be asked directly of the applicant. Accordingly, in speaking with former employers or references, impermissible inquiries should not be made.

7. Selection

The LDSS shall take into consideration all information on the application, performance during the interview process, and employment reference checks when determining the suitability of an applicant for employment. Race, color, religion, national origin, political affiliation, sex, age, or other non-KSA information, such as salary history or marital status, must not play a part in the selection decision.

The appointment of any applicant to any position, excluding emergency positions, shall not be effective until both of the following conditions are met:

- a. The applicant must have been referred by Department HR on a Referral List, Interview List, Supplemental Interview List, or Addendum Interview List; and
- b. All employment interviews have been concluded.

H. The Selection Process for Recruitment Management System agencies

A local agency that accepts online applications via the RECRUITMENT MANAGEMENT SYSTEM should adhere to the timeframes indicated below. The timeframes below should be considered maximums.

Steps	Maximum Time Frames	Steps in the Process	Status in the System
1		Position becomes vacant.	
2		Review Work Profile accuracy or develop new one. (Using VDSS format)	
3		Create a Requisition using Recruitment Management System with screening criteria.	
4		Submit requisition to Department HR for approval.	
5		Department HR approves ad and posts. Status changes automatically in System.	Under Review by Department HR

Chapter 3 – Recruitment & Selection

6		LDSS may advertise in their advertising mediums using the same approved ad. *	
7			
8		The LDSS will determine the interviewing panel and set interviewing dates for first interview and the second, if applicable.	
9		The consultant will input the position on a time clock. This will be managed by Department HR.	
10		Recruitment Management System collects applications.	
11	Day 1	Position Closes.	
12	Day 14	LDSS completes all screening for the position. A complete screening is used in all cases.	
13	Day 15	LDSS emails or faxes a copy of the completed Screening to their Department HR consultant <u>and</u> sends an email informing their consultant of the minimum score needed to interview from the System.	
14		LDSS solidifies interviewing panel and times.	
15	Day 20	The Department HR consultant ratifies the interview list and sends notification via email. LDSS sets up 1st interviews. LDSS updates statuses in Recruitment Management System.	Offered Interview/Invited for Interview
16		LDSS creates interviewing questions that are legal, representative of the Work Profile and that will be used with each candidate.	
17	Day 30	LDSS conducts interviews.	
18	Day 32	Set up second interviews.	
19	Day 42	LDSS conducts second interviews, if applicable. LDSS changes statuses in System.	Interviewed or Declined Interview

Chapter 3 – Recruitment & Selection

20	<i>Day 44</i>	Criminal histories and State Central Registry Checks of final candidates are conducted.	
21	<i>Day 49</i>	Offer is made. LDSS changes applicant statuses in System.	Offered Job/Offered Employment or Declined Offer
22	<i>Day 50</i>	Offer is accepted or declined. Send Department HR Consultant email notifying that the offer has been accepted so that the time clock can be stopped.	Hired and date
23		Offer Letter is sent by the LDSS.	
24		Department HR will print a copy of the EEO report and keep that with the batch. LDSS should maintain their files as they have always done for recruitments.	

* Local agencies that use print ADS (newspaper) should consider shorter ADS that refer applicants to the State or local government website for detailed job information.

I. Background and Records Checks

1. Negligent Hiring and Retention

As previously stated, there is a duty imposed on employers to avoid negligence in the hire and retention of employees. A claim of negligence arises when an employee injures a co-worker or third party and a claim is made that the employer should not have hired or retained the employee because the employer knew or should have known that the employee posed a threat of harm to others.

There are two frequently encountered situations that give rise to such a complaint. The first is the employer's failure to conduct a thorough background check. The other is when behaviors are observed that would cause a cautious employer to intervene and the employer does not; for example, when a Local Department of Social Services hires a felon convicted of child molestation and unaware of the conviction due to failure to conduct a criminal background check or when the Local

Chapter 3 – Recruitment & Selection

Department of Social Services receives complaints that the employee's conduct with children is suspicious and no investigation is undertaken. If an employee abuses a child in the Local Department of Social Services' care, the local department may be held liable for damages. The liability would be on the basis that the department knew or should have known that the employee was a danger to children and it negligently hired or retained the employee.

Therefore each LDSS should conduct a thorough and careful background check on applicants and be conscientious in its supervision of employees. A driving record check (for each state in which the applicant resided in the past ten years) is also suggested for positions requiring operation of a vehicle.

2. Types of Background and Record Checks

Three types of background record checks should be conducted before hiring an employee (or using a volunteer). Often a LDSS will hire an employee while awaiting the results of these checks. In this instance, the offer of employment should clearly state that the offer is contingent upon satisfactory results of the criminal, driving, and Central Registry background checks. It is preferable to have these record checks done before employment commences because a record check may reveal that the employee is a potential danger to the safety or welfare of others with whom they are brought into contact while at work.

a. Criminal History Background Searches

If a prospective or current employee, volunteer or intern has been convicted of a "barrier crime" or is the subject of any pending criminal charges, the individual may not be considered for certain positions that may be related to the crime. The Criminal Records Decision Tree should be used to make the appropriate determination.

Consequently, the LDSS should, pursuant to the authority granted under *Code of Virginia* §§ 63.2-1719 and 63.2-1726, conduct a state and national criminal history background check on applicants, employees or volunteers.

Chapter 3 – Recruitment & Selection

The Virginia State Police (VSP) is responsible for conducting criminal history background searches. Once the search is initiated by the LDSS, the VSP will check the state and national criminal history data banks to determine if an individual has been convicted of a crime within or outside the Commonwealth.

b. LDSS Registration with the VSP

Before a LDSS may begin to request criminal background searches, it must first register with the VSP and, through the VSP, with the Federal Bureau of Investigation (FBI).

(1) Designation of Local Coordinator:

The LDSS must designate a coordinator who will be responsible for all communications with the VSP regarding background searches (the “Coordinator”). The Coordinator will be required to review all requests for background searches for accuracy before submitting them to the VSP and will receive completed searches from the FBI.

(2) Establishment of Account:

Once a local Coordinator is chosen, a letter must be forwarded to the VSP requesting that the FBI assign an “ORI” number (which is an identification number that the FBI assigns) and that the VSP establish an account for the LDSS. A form letter that both the VSP and the FBI have approved is provided in the Appendix. The LDSS should fill in the blank sections and print the letter on the LDSS’ letterhead.

Generally within two weeks after the letter is received, the FBI will determine if the LDSS is eligible to conduct background checks on its employees. If so, the FBI will assign the LDSS an ORI number and will mail special fingerprint cards to the Coordinator. When the LDSS’ eligibility to request national criminal history background searches is approved by the FBI, the VSP will assign an account number to the LDSS. Currently, the VSP charges a \$37.00 fee for each search involving a current or prospective employee and a fee of \$26.00 for a current or prospective volunteer.

c. Search Initiation

Chapter 3 – Recruitment & Selection

Once the LDSS is registered with the VSP and the FBI, it may begin to request criminal background searches. In order to initiate a state and national criminal history background search, a VSP form number SP-24 must be completed, along with two sets of fingerprint cards.

(1) Form SP-24

(a) The individual must complete and sign section I of the VSP form number SP-24.

(b) The local Coordinator must fill out the remainder of the form.

(2) Notice

The individual must be given the form entitled “Notice to Applicant/Volunteer”.

(3) Fingerprint Cards

(a) The individual must be fingerprinted at a local law enforcement agency office.

(b) The individual’s fingerprints must appear on two sets of fingerprint cards provided to the LDSS by the VSP.

d. Submission of Data to VSP

Once form SP-24 and the fingerprint cards are complete, the Coordinator submits both documents to the VSP at the address provided on form SP-24 for processing by the VSP and the FBI.

e. Barrier Crimes

Once the completed criminal history background check is returned, the Coordinator should look for the presence of any “barrier crimes.”

Following is the list of “barrier crimes” provided in § 63.2-1719 and 63.2-1726 of the *Code of Virginia*.

Chapter 3 – Recruitment & Selection

"Barrier Crime" is defined in § 63.2-1719 and § 63.2-1726 of the *Code of Virginia* as:

- (1) a conviction of murder or manslaughter as set out in Article 1 (§ [18.2-30](#) et seq.) of Chapter 4 of Title 18.2;
- (2) malicious wounding by mob as set out in § [18.2-41](#);
- (3) abduction as set out in subsection A of § [18.2-47](#);
- (4) abduction for immoral purposes as set out in § [18.2-48](#);
- (5) assaults and bodily woundings as set out in Article 4 (§ [18.2-51](#) et seq.) of Chapter 4 of Title 18.2;
- (6) robbery as set out in § [18.2-58](#);
- (7) carjacking as set out in § [18.2-58.1](#);
- (8) extortion by threat as set out in § [18.2-59](#);
- (9) threats of death or bodily injury as set out in § [18.2-60](#);
- (10) felony stalking as set out in § [18.2-60.3](#);
- (11) sexual assault as set out in Article 7 (§ [18.2-61](#) et seq.) of Chapter 4 of Title 18.2;
- (12) arson as set out in Article 1 (§ [18.2-77](#) et seq.) of Chapter 5 of Title 18.2;
- (13) burglary as set out in Article 2 (§ [18.2-89](#) et seq.) of Chapter 5 of Title 18.2;
- (14) possession or distribution of drugs as set out in Article 1 (§ [18.2-247](#) et seq.) of Chapter 7 of Title 18.2;
- (15) drive by shooting as set out in § [18.2-286.1](#);
- (16) use of a machine gun in a crime of violence as set out in § [18.2-289](#);
- (17) aggressive use of a machine gun as set out in § [18.2-290](#);
- (18) use of a sawed-off shotgun in a crime of violence as set out in subsection A of § [18.2-300](#);
- (19) pandering as set out in § [18.2-355](#);
- (20) crimes against nature involving children as set out in § [18.2-361](#);
- (21) incest as set out in § [18.2-366](#);
- (22) taking indecent liberties with children as set out in § [18.2-370](#) or § [18.2-370.1](#);
- (23) abuse and neglect of children as set out in § [18.2-371.1](#);
- (24) failure to secure medical attention for an injured child as set out in § [18.2-314](#);
- (25) obscenity offenses as set out in § [18.2-374.1](#), possession of child pornography as set out in § [18.2-374.1.1](#);
- (26) electronic facilitation of pornography as set out in § [18.2-374.3](#),
- (27) abuse and neglect of incapacitated adults as set out in § [18.2-369](#);

Chapter 3 – Recruitment & Selection

- (28) employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ [18.2-372](#) et seq.) of Chapter 8 of Title 18.2 as set out in § [18.2-379](#);
- (29) delivery of drugs to prisoners as set out in § [18.2-474.1](#);
- (30) escape from jail as set out in § [18.2-477](#);
- (31) felonies by prisoners as set out in § [53.1-203](#);
- (32) convictions of burglary as set out in Article 2 (§ [18.2-89](#) et seq.) of Chapter 5 of Title 18.2; and
- (33) any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ [18.2-247](#) et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state.
- (34) a founded complaint of child abuse or neglect within or outside the Commonwealth; and
- (35) a conviction of any other felony not included in the definition of barrier crime unless five years have elapsed since conviction.
- (36) Convictions of equivalent offenses in other states are also barrier crimes.

If the individual has been convicted of one misdemeanor barrier crime not involving abuse or neglect or moral turpitude, the LDSS may, but is not required to, hire or allow the individual to continue to work in such a position, provided five years have elapsed following the conviction. If such individual is hired, careful supervision should be followed to avoid a claim of negligent retention.

3. Virginia Department of Social Services Central Records Exchange

The LDSS must also check for any listings in the Virginia Department of Social Services Central Registry for founded dispositions of child abuse or neglect.

a. Initiation of the Search

The individual must fill in the appropriate information on the LDSS form entitled “Virginia Department of Social Services/Child Protective Services Request for Search of the Central Registry and Release of Information Form.” The individual must sign the acknowledgement section of the form, which must be witnessed by a notary.

b. Submission of the Form

Chapter 3 – Recruitment & Selection

The form must be submitted to the Virginia Department of Social Services at the address provided on the form. Although the LDSS has access to the Central Registry for other purposes, as an employer it must have this form completed.

4. Department of Motor Vehicles History Search

The LDSS should also obtain a recent copy of each individual's driver record if their position requires a valid driver's license, the transportation of clients, or the use of a motor vehicle as part of the position responsibilities.

a. Initiation of the Search

A search of the Virginia Department of Motor Vehicles is initiated by having the individual send a letter to the Department of Motor Vehicles requesting a seven-year driver history record for employment purposes at the following address: Attention: Vehicle (Driver) Records Work Center
Virginia Department of Motor Vehicles
Attention: Vehicle (Driver) Records Work Center
P. O. Box 27412
Richmond, VA 23269

The request may also be submitted on-line at www.dmv.state.va.us or by visiting a Department of Motor Vehicles customer service center. If the individual lived outside of Virginia or registered a vehicle outside of Virginia at any time during the past seven years, the individual must provide a driver history record from that state in addition to the Virginia report.

b. Receiving the Information

The driver history information will be provided to the individual by the Department of Motor Vehicles; the individual must then provide the original report(s) to the LDSS.

5. Actions to be Taken When Negative Information is Disclosed

a. Information from a government agency:

When background history information is obtained directly from a government agency (e.g., the VSP, FBI, DSS, or DMV), the LDSS should take appropriate employment action.

b. Information from Private Reporting Agencies:

Chapter 3 – Recruitment & Selection

When background history information is provided from a third party hired to perform such a records check (e.g., an employment agency or company specializing in providing background checks to employers), the Fair Credit Reporting Act imposes several procedural steps.

- (1) The individual must consent to the records check and receive a Summary of Your Rights under the Fair Credit Reporting Act.
- (2) Notice of Pre-Adverse Action:
 - (a) If, based on the information received, the LDSS disqualifies the individual from the position sought; the LDSS must send the applicant the Pre-Adverse Action Notice, along with the following:
 - (i) the information obtained from the search;
 - (ii) the notice entitled A Summary of Your Rights Under the Fair Credit Reporting Act;
 - (iii) the notice entitled Notice to Prospective or Current Employee or Volunteer.
 - (b) If the LDSS determines that the individual is disqualified for the position sought due to the information obtained, the LDSS must provide the following:
 - (i) the Notice of Adverse Action; and
 - (ii) a copy of the Notice to Prospective or Current Employee, Volunteer or Intern.

Chapter 3 – Recruitment & Selection

6. Confidentiality and Maintenance of Records

All records and information concerning personnel actions shall remain confidential and should be disclosed only with the employee's permission unless there is a need to know. All information should be maintained consistent with Chapter 8, Personnel Records.

J. Completing the Hiring Process

1. Making an Employment Offer

It is recommended that an offer of employment be communicated in writing so there is no misunderstanding regarding the essential terms and conditions of the offer. The wording of the offer should be carefully reviewed to avoid creating unintended rights to job security that may undermine "at-will" employment and impact the LDSS' ability to terminate the employee at any time. Therefore, employment offer letters should:

- a. avoid implying a contract or guarantee of employment for a particular period of time;
- b. describe any conditions of employment, such as criminal records check, medical examination, or drug test;
- c. state the probationary period, if appropriate; and
- d. explain any required certification or training period that might apply.

A Sample Offer Letter is included in the forms. The offer letter should include the forms that are listed under the First Day of Employment Forms in the Appendix.

2. Provide employment information to the employee

Once a candidate has accepted an employment offer and a start date has been set, the LDSS should provide information such as:

- a. where, when and to whom to report;
- b. parking and building access data;
- c. materials or information needed on the first day, such as a list of acceptable documents needed to complete the I-9 form; and
- d. benefits information and information concerning decisions that will need to be made shortly after beginning employment.

Chapter 3 – Recruitment & Selection

3. Employee Orientation

Agencies are encouraged to provide an orientation program for all new and re-hired employees within a reasonable time of their employment dates. This orientation should include:

- a. a complete explanation of employee benefits, including leave types, payroll options, and insurance choices;
- b. information about the agency and its mission;
- c. policies and requirements governing employee rights and behaviors; and
- d. other features of employment with the LDSS.

4. Verification of Employee Identification and Eligibility to Work/I-9

As required by the Immigration Reform and Control Act of 1986, agencies must verify the identification and employment eligibility status of all persons hired. Form I-9 must be completed for each newly hired employee, including agency transfers, within three (3) days of hire. A sample Form I-9 is included in the forms section of the Appendix.

5. LDSS Notification of Selection to Department HR

Upon completion of the selection process, the LDSS shall submit to Department HR:

- a. The Preliminary Referral List, Interview List, a Supplemental Interview List, and/or an Addendum Interview List on which the appropriate disposition codes have been noted;
- b. A copy of the original Request to Advertise Position form on which Selection Data, has been completed;
- c. A copy of the application of the individual selected for the position (the LDSS shall retain the original for placement in the LDSS' personnel files); and
- d. Original applications of all applicants who were not selected.

Chapter 3 – Recruitment & Selection

K. Independent Contractors

When a LDSS engages the services of another individual, the relationship may be contractual. There is a belief, mistakenly held, that all contractual personal service relationships are those of an independent contractor. Contractual services may be performed either as an employee or as an independent contractor. Determining whether a worker is an independent contractor or an employee is a fact-specific determination. The greater the degree of control and direction an alleged "employer" retains, the more likely workers will be considered employees. However, where a worker retains autonomy and self-regulation, the worker will be found to be an independent contractor.

Factors Considered by the IRS for Determining Independent Contractor Status:

1. Instructions

A worker who is required to comply with the employer's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the employer has the right to require compliance with instructions.

2. Training

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the employer wants the services performed in a particular method or manner.

3. Integration

Integration of the worker's services into the organization's operations generally shows that the worker is subject to direction and control. When the success or continuation of an organization depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the employer.

4. Services Rendered Personally

If the services must be rendered personally, presumably the employer is interested in the methods used to accomplish the work as well as in the results.

Chapter 3 – Recruitment & Selection

5. Hiring, Supervising, and Paying Assistants

If the employer hires, supervises, and pays assistants, this factor generally shows control over the workers on the job. However, if one worker hires, supervises, and pays the assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, this factor indicates independent contractor status.

6. Continuing Relationship

A continuing relationship between the worker and the employer indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.

7. Set Hours of Work

The establishment of set hours of work by the employer is a factor indicating control.

8. Full Time Required

If the worker must devote substantially full time to the business of the employer, that employer has control over the amount of time the worker spends working and impliedly restricts the worker from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses.

9. Doing Work on Employer's Premises

If the work is performed on the premises of the employer, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the employer, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the employer has the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.

Chapter 3 – Recruitment & Selection

10. Order or Sequence Set

If a worker must perform services in the order or sequence set by the employer, that factor shows that the worker is not free to follow the worker's own pattern of work but must follow the established routines and schedules of the employer. Often, because of the nature of an occupation, the employer does not set the order of the services or sets the order infrequently. It is sufficient to show control, however, if the employer retains the right to do so.

11. Oral or Written Reports

A requirement that the worker submit regular or written reports to the employer indicates a degree of control.

12. Payment by the Hour, Week, or Month

Payment by the hour, week or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying the lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor.

13. Payment of Business and/or Traveling Expenses

If the employer ordinarily pays the worker's business and/or traveling expenses, the worker is ordinarily an employee. To be able to control expenses, an employer generally retains the right to regulate and direct the worker's business activities.

14. Furnishing of Tools and Materials

The fact that the employer furnishes significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

15. Significant Investment

If the worker invests in facilities that are used by the worker in performing services and are not typically maintained by employees (such as the maintenance of an office rented at fair value from an unrelated party), that factor tends to indicate that the worker is an independent contractor. On the other hand, lack of investment in facilities indicates dependence on the

Chapter 3 – Recruitment & Selection

employer for such facilities and, accordingly, the existence of an employer-employee relationship. Special scrutiny is required with respect to certain types of facilities, such as home offices.

16. Realization of Profit or Loss

A worker who can realize a profit or suffer a loss as a result of the worker's services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor, but the worker who cannot is an employee. For example, if the worker is subject to a real risk of economic loss because of significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, that factor indicates that the worker is an independent contractor. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a significant economic risk to support treatment as an independent contractor.

17. Working for More than One Firm at a Time

If a worker performs more than *de minimis* services for a multiple of unrelated persons or organizations at the same time, that factor generally indicates that the worker is an independent contractor. However, a worker who performs services for more than one person may be an employee of each of those persons, especially where such persons are part of the same service arrangement.

18. Making Services Available to General Public

The fact that a worker makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship.

19. Right to Discharge

The right to discharge a worker is a factor indicating that the worker is an employee. An employee is often controlled through the threat of dismissal, and therefore obeys the employer's instructions. An independent contractor, on the other hand, cannot be "fired" as long as he or she produces a result that meets the contract specifications.

20. Right to Terminate

Chapter 3 – Recruitment & Selection

If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

L. Selection Records

1. Retaining Records

a. The following records must be maintained confidentially for a period of at least three (3) years from the date the position is filled (Recruitment Management System automatically maintains some of these records):

- (1) Position description;
- (2) Records related to recruitment efforts;
- (3) Copies of advertisements;
- (4) Employment applications;
- (5) Race and gender data on all applicants; (NOTE: if information is not provided by the applicant, record race and sex data as “unknown.”)
- (6) Screening and selection criteria applied;
- (7) Interview questions and notes on applicant responses (scoring sheets);
- (8) References; and,
- (9) Any documentation supporting selection or addressing non-selection

2. Destroying Records

Records must be retained and/or destroyed in accordance with the guidelines established by the Library of Virginia. Agencies that are uncertain about the procedures or guidelines should contact the Library of Virginia.

M. Forms

1. Background and Records Check Forms

Chapter 3 – Recruitment & Selection

- a. Criminal Background Check
 - (1) Letter to Virginia State Police Establishing Account
 - (2) Criminal Background Check Form SP-24
 - (3) Notice to Applicant / Volunteer: Rights Regarding Criminal Background Checks
 - (4) Virginia Department of Social Services/Child Protection Services Request for Search of the Central Registry and Release of Information Form
 - (5) Criminal Records Decision Tree
- b. Fair Credit Reporting Act Forms
 - (1) Notice and Consent to Background Check
 - (2) A Summary of Your Rights Under the Fair Credit Reporting Act
 - (3) Pre-Adverse Action Notice
 - (4) Notice of Adverse Action
 - (5) Notice to Users of Consumer Reports
- 2. Recruitment Forms (non-Recruitment Management System)– Department HR
 - a. Request to Advertise Position
 - b. Sample Recruitment Announcement
 - c. Sample Newspaper Advertisement
 - d. Application for Employment
 - e. Employment Application Evaluation Guidelines
 - f. Sample Notification of Status Letters (5)
 - g. Employment Interview Disposition Status Codes
- 3. Pre-Hire Forms
 - a. Pre-Employment Inquiry Guidelines
 - b. Former Employer Release of Information
 - c. Consent to Pre-Employment Medical Testing
 - d. Sample Offer Letter
 - e. Summary of Required Forms to Be Completed on First Day
- 4. First Day of Employment Forms
 - a. Acknowledgment of Receipt of Human Resources Manual
 - b. Types of INS Work Authorizations (VISAs)

Chapter 3 – Recruitment & Selection

- c. Frequently Asked Questions About Employment Eligibility
- d. Direct Deposit Authorization Form
- e. Deduction from Final Paycheck
- f. Wage Withholding Authorization
- g. Agreement on the Use of Compensatory Time in Lieu of Overtime Pay
- h. Virginia New Hire Form (VEC)
- i. State Child Support Form (VEC)

Chapter 4 – Leave

Chapter 4 Table of Contents

<u>Section</u>	<u>Page</u>
I. Annual Leave.....	45
A. Annual Leave Accrual	45
B. Use of Annual Leave	46
C. Notice and Approval	47
D. Treatment of Annual Leave upon Change in Status	47
E. Change in Employment Status	48
F. Employee Accountability	48
II. Civil Leave	49
A. Use	49
B. Compensation Received	50
III. Leave without Pay.....	51
A. Use of Unpaid Leave.....	51
B. Effect of Unpaid Leave Status	52
IV. Military Leave	55
A. Military Leave	55
B. Reinstatement from Military Service	58
C. Family and Medical Leave	59
D. Annual Notice of Military Leave Rights	59
V. Educational Leave	61
A. Use of Educational Leave	61
B. Return from Educational Leave	61
C. Educational Pursuits Required by the LDSS	62
VI. Administrative Leave	63
A. Use of Administrative Leave.....	63
B. Benefits While on Administrative Leave with Pay	63
VII. Bereavement Leave	65

Chapter 4 – Leave

Chapter 4 Table of Contents

<u>Section</u>	<u>Page</u>
VIII. Sick Leave	67
A. Americans With Disabilities Act	67
B. Sick Leave Accrual.....	67
C. Use of Sick Leave	68
D. Notice and Approval	69
E. Verification of Need for Sick Leave.....	70
F. Treatment of Sick Leave upon Change in Status.....	70
G. Transfer of Leave	71
H. Change in Employment Status	72
I. Employment Accountability	72
IX. Disability Leave Program	73
A. Sick Leave Credit	73
B. Family and Personal Leave Credit.....	77
X. Family and Medical Leave Act	81
A. Definitions	81
B. Eligibility Requirements	85
C. Qualifying Reasons	85
D. Restrictions on Usage	86
E. FMLA Leave is Unpaid	87
F. Procedures Regarding Usage	87
G. Intention to Return to Work.....	90
H. Intermittent Leave or Leave on Reduced Schedule	90
I. FMLA Military Entitlements.....	90
1. Qualifying Exigency Leave	90
2. Military Caregiver Leave.....	91
J. Effect on Employment Benefits	91
K. Workers' Compensation and FMLA.....	92
L. Returning from Leave.....	92
M. FMLA Records Management.....	94
N. Violations	95
O. FMLA, ADA and PDA	95
XI. Leave Sharing	97
A. Eligibility	97

Chapter 4 – Leave

Chapter 4 Table of Contents

<u>Section</u>	<u>Page</u>
B. Requests / Approvals	98
C. Status While on Donated Leave	98
D. Discretionary Benefits	98
E. Leave Bank Requirements	99
F. Penalties for Abuse	100
XII. Virginia Workers' Compensation	101
A. Definitions	101
B. Benefits to Which an Employee May be Entitled	102
C. Responsibilities of an Injured Employee	102

Chapter 4 – Leave

[This page intentionally left blank.]

Chapter 4 – Leave

Section I Annual Leave

Purpose

The purpose of this policy is to provide the procedures for earning paid leave for time away from work for personal reasons including vacation time.

Scope

This policy applies to all employees who are not in temporary or emergency positions or in restricted positions for which the funding sources do not provide benefits. A part-time employee is one who works at least one half the normal work week hours or greater.

A. Annual Leave Accrual

1. Rate

Employees earn paid annual leave on a pay period basis as follows:

- a. A full-time employee earns annual leave based upon years of service.
- b. A part-time employee earns annual leave at a proportionate rate.
- c. If the LDSS does not have monthly pay periods, annual leave is accrued each pay period in an amount proportionate to that earned on a monthly basis.
- d. The following chart sets forth the amounts of annual leave that may be accrued during each month based on years of service. A day equates to eight hours if the normal work schedule is forty hours. For LDSS that have bi-monthly or bi-weekly pay periods, the accrual rate can be adjusted accordingly.

<u>Years of Service</u>	<u>Monthly Accrual Rate</u>
Up to 5 years	1 day
5 years	1-1/4 days
10 years	1-1/2 days
15 years	1-3/4 days
20 years	2 days
25 years	2-1/4 days

Chapter 4 – Leave

e. When hiring an employee who left a position without a break in service with another LDSS or the Virginia Department of Social Services, the LDSS has the authority to provide the employee with the same accrual rate of the previous position.

2. Accrual of Leave

Annual leave does not accrue until the end of the pay period in which it is earned and may not be used until the first day of the following pay period or work week.

3. Effect of Leave without Pay on Accrual

An employee on leave without pay for any part of the pay period or work week does not earn annual leave for that pay period or work week and may have the accrual rate affected (see Leave without Pay policy).

4. Carrying Over

a. The following limits apply to the amount of annual leave that is permitted to be carried over to the next year as well as the amount that will be paid at termination.

<u>Years of Service</u>	<u>Maximum Yearly Carryover</u>
Up to 5 years	24 day
5 years	30 days
10 years	36 days
15 years	42 days
20 years	48 days
25 years	54 days

b. For purposes of yearly carryover, a LDSS may designate a calendar year, fiscal year, or any other twelve (12) month period.

B. Use of Annual Leave

1. Use

Annual leave may be used for any reason provided advanced approval is given.

Chapter 4 – Leave

2. Leave Must Be Accrued

Annual leave cannot be used until it is accrued. There is no borrowing against future accruals.

C. Notice and Approval

1. Advanced Approval

Annual leave may be not used without prior approval. Although every effort will be made to accommodate a request for annual leave, not all requests can be granted during high peak times. Therefore, requests for annual leave should be submitted as soon as the need is known. For annual leave to be taken around a holiday, a request should be made as early as possible.

2. Approval Required at All Times

For absences that are not foreseeable, or for emergency situations, the employee must provide notice of the need to use the leave as soon as practicable. Until approval is provided, the absence will count as unauthorized leave without pay.

D. Treatment of Annual Leave upon Change in Status

1. Payment at Termination

- a. When employment is terminated, the employee will be paid for accrued annual leave in a lump sum up to the accrued maximum carryover amount. Educational leave, FMLA leave, military leave, and other forms of extended leave are not considered terminations for the purposes of receiving payment for accrued annual leave.
- b. For the purpose of unemployment compensation benefits the lump sum payment will be allocated as wages for the equivalent daily/weekly periods.

2. Payment at Death

Payment upon an employee's death shall be made to the Administrator or the Executor of the employee's estate. If there is no Administrator or Executor, payment shall go to the surviving spouse, or if none, to the next of kin in accordance with § 64.1-123 of the *Code of Virginia*. Payment may be held for 60 days.

3. Right to Repurchase

An employee who is rehired by the same LDSS within six (6) months from the date of a layoff or an employee who is reinstated by a grievance panel, may have the

Chapter 4 – Leave

annual leave balances restored by paying the amount of any annual leave payment received at termination.

E. Change in Employment Status

If the status of an employee is changed from temporary to probationary, regular, or restricted, the provisions of Section IX. Disability Leave Program may apply. The temporary employment period may be considered part of the total service in determining the rate at which the allowance for annual leave shall accrue in the new status.

F. Employee Accountability

1. The employee is responsible for knowing the amount of annual leave balances that should have been accrued.
2. An employee will be required to reimburse the LDSS from his/her salary for leave taken when there was a recordkeeping error and there was not sufficient accrued leave to cover the time taken. Reimbursement may be in the form of monetary reimbursement, charging the time to other accrued paid leave, or at the LDSS's option, future leave accruals.
3. No matter how urgent the need for the leave may be, the LDSS has no authority to grant paid leave when there is not sufficient accrued leave.

Chapter 4 – Leave

Section II Civil Leave

Purpose

The purpose of this policy is to provide employees with paid leave for time away from work for civic and administrative purposes.

Scope

This policy applies to all regular employees.

A. Use

1. Purposes

Civil leave may be granted for the following purposes:

- a. To serve on a jury, to appear as a witness in a court proceeding or deposition as compelled by a subpoena or summons in a court proceeding in which the employee is not the plaintiff or the defendant, or to accompany the employee's child to court when the child is required to appear in court.
- b. To participate in the resolution of work related conflicts, grievances, or investigations into complaints of discrimination arising within the LDSS.
- c. To participate in a workers' compensation or unemployment compensation hearing or administrative proceeding involving the employee or another employee within the LDSS.
- d. With the prior permission of the LDSS, to serve on governmental councils, boards, commissions, or committees.

2. Reasonable Use of Civil Leave

- a. The amount of civil leave requested must be reasonable.
- b. Civil leave is to include all time required for judicial appearances or jury duty, as well as travel time to and from the destination. If a full day is not required, the employee is expected to report to the office to complete the hours required for that day.

Chapter 4 – Leave

- c. If because of distance and/or inconvenience, reporting to work before or after civil leave is not feasible, the employee with permission of the Director may use annual leave for the remaining hours of that work day.

3. Advance Approval Required

As soon as the employee knows of the need for the civil leave, the supervisor must be notified. If there should be a problem with the leave, to the extent that the employee can, the employee should make a request to appear at an alternative time. Failure of the employee to provide advanced notice may result in disciplinary action.

4. For service on a jury, the employee is to receive his full salary and not have the leave time charged to annual or compensatory leave.

B. Compensation Received

1. Reimbursements

An employee may keep any money received from the administrative or judicial tribunal while on civil leave if such money is provided as reimbursement for expenses. If the employee has used an LDSS vehicle or has received any advance money (cash, credit card, or check) for travel from the LDSS, the employee is obligated to return the travel money advanced by the LDSS (in the case of the use of the LDSS vehicle, the mileage reimbursement equivalent).

2. Compensation

If an employee receives compensation for the services provided while on civil leave (e.g., expert witness fees or for service as a juror), the employee must report such compensation to the LDSS and have the hours taken not recorded as civil leave. The employee may use accrued annual leave, or take leave without pay, for the hours of compensated service.

Chapter 4 – Leave

Section III Leave without Pay

Purpose

The purpose of this policy is to provide procedures for LDSS to allow employees to be placed on leave without pay (LWOP).

Scope

This policy applies to all employees.

A. Use of Unpaid Leave

1. Use

If the needs of the LDSS permit, and if the grant of such time away from work is not burdensome to the LDSS, an employee may request the use of unpaid leave for a specified period of time. LWOP must be granted to eligible employees for FMLA and military leave purposes.

2. LWOP Not Granted if Paid Leave Available

Except for FMLA and military leaves of absence, an employee cannot be on LWOP until all accrued paid leave available for such purposes has been exhausted. In extenuating circumstances a LDSS may permit the *pro rata* use of paid leave and unpaid leave so that the employee would not lose benefits such as health plan and retirement participation.

3. Duration

LWOP will not be granted for more than three (3) months except for an employee on intermittent FMLA or military leave.

4. Job Restoration

- a. Except as noted below, if the LDSS cannot hold the position open during the period of LWOP, the LDSS should notify the employee at the commencement of the leave or as soon as such a determination is made that the LDSS will fill the position. The employee should be informed of the need to fill the position and that employee must report back to work on full-time status within a specified period of time. Such notice should be provided in writing and delivered to or sent by certified mail to the employee.

Chapter 4 – Leave

- b. Employees on FMLA or military leave status are entitled to job restoration under the conditions set forth in each respective policy.
- 5. If an employee does not report back to work at the end of the LWOP period, the employee will be deemed to have resigned.

B. Effect of Unpaid Leave Status on Benefits

1. Accrued Leave

An employee who is on LWOP does not accrue annual or sick leave for that pay period.

2. Leave Anniversary Dates

After fourteen (14) consecutive calendar days of LWOP, the employee's next leave anniversary date for the purposes of accruing annual leave will be adjusted according to the following chart:

<u>Calendar Days on Leave without Pay</u>	<u>Extension of Anniversary Date (Pay Periods)</u>
1-14	0
15-31	1
32-46	2
47-61	3
62-76	4
77-91	5

3. Effect on Raises and Bonuses

An employee on LWOP may have performance raises and bonuses affected by the absence from work.

4. Retirement

LWOP is to be reported to the Virginia Retirement System. An employee's years of service may be affected by such absence.

Chapter 4 – Leave

5. Life Insurance

The LDSS may elect to make its contribution for life insurance for all or part of the LWOP or permit an employee on LWOP to continue coverage at the employee's expense. If such election is permitted, the LDSS must provide the employee with notice and an election form at commencement of the LWOP.

6. Health Care Coverage

a. Except as provided below, upon the commencement of LWOP, the employee will be provided with a COBRA Notice and Health Care Continuation Election form. If continuation coverage is elected, the employee and other qualified beneficiaries may continue coverage for 18 months (longer if disabled or with the occurrence of a second qualifying event). The full cost of the continued coverage is borne fully by the employee.

(1) If LWOP is taken under FMLA, the employee is entitled to remain under the health plan on the same terms as if employed for the entire period of the FMLA leave. The LDSS will continue to contribute its share of the costs.

(2) For short and/or intermittent periods of LWOP, the LDSS has the option of providing continuing coverage on the same terms as if the employee was not on LWOP. If such is elected, the COBRA procedures do not apply.

7. Other Benefits

If other benefits are provided to the employee, the LDSS should establish a policy on whether they continue during LWOP.

Chapter 4 – Leave

[This page intentionally left blank.]

Chapter 4 – Leave

Section IV Military Leave

Purpose

The purpose of this policy is to provide the procedures governing leaves of absence from work for the purposes of fulfilling military duty obligations and to set forth employees' job restoration rights under the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and § 44-93 and 44-93.1 of the *Code of Virginia*.

Scope

This policy applies to all employees who are in non-temporary positions and who are called to covered service in the U.S. Armed Forces, commissioned Corps of the Public Health Service, National Guard, Air National Guard, Naval Militia, Coast Guard, and reservists of these uniformed services. Covered service includes: voluntary and involuntary duty; active or inactive duty; training; and full-time duty with the National Guard, Naval Militia, or Public Health Service.

A. Military Leave

An employee is eligible for military leave if the employee has not used five years of military leave during his employment with the LDSS.

1. Advanced Notice of Need for Leave

- a. To retain job restoration rights, and to be granted leave, an employee must provide the LDSS with advanced notice, either in writing or orally, of the call to military service which includes training duty.
- b. Advanced notice must be provided unless providing such notice is not possible or reasonable under the circumstances.
- c. The employee should provide the LDSS with a copy of the military orders at time of notice, but if not presented at that time, may be provided to the LDSS after the leave is granted.

2. Military Leave with Pay

- a. Per federal fiscal year, a public employee must be granted up to 15 workdays (120 hours) of military leave with pay per federally funded tour of duty.

Chapter 4 – Leave

- b. For employees who do not normally work approximately equal workdays of five or more days per calendar week, a “workday” shall mean 1/260 of the total working hours the employee would have been scheduled to work during the federal fiscal year not taking into account any holidays, paid or unpaid leaves of absence, or other absences.
 - c. Benefits received while on military leave with pay are the same as if the employee were employed.
3. Military Leave without Pay
- a. Employees are granted unconditional military leave without pay for covered service provided that the cumulative length of all military leave does not exceed five years and they have not been dishonorably discharged.
 - b. Benefits during military leave without pay:
 - (1) Leave Benefits
 - (a) Annual Leave
 - (i) Employees will not accrue annual leave when they are on leave without pay status.
 - (ii) Employees may retain all or a portion of their accrued annual leave, may use all or part of the accrued leave to supplement military pay, or be paid for the accrued annual leave at the commencement of military leave without pay.
 - (iii) Military leave without pay counts in the calculation of years of service when determining the rates for accruing annual leave and determining their seniority for layoff purposes.
 - (b) Compensatory and Special Duty Leave

Employees may retain all or a portion of their compensatory and special duty leave, may use all or part of the leave to supplement military pay, or be paid for the leave at the commencement of military leave without pay.
 - (c) Sick Leave
 - (i) Employees will not accrue sick leave while on leave without pay status.

Chapter 4 – Leave

- (ii) Employees with less than five years of continuous service with the LDSS at the commencement of military leave without pay may retain their sick leave balances, which are reactivated upon reinstatement to local service.
 - (iii) Employees with five or more years of continuous employment with the LDSS at the time military leave begins may retain their entire sick leave balances (which shall be reactivated upon reinstatement) or may receive payment for the accrued sick leave under the provisions of the sick leave policy. Once payment for sick leave is made, all remaining balances are lost and can not be reinstated upon reemployment.
 - Employees who received payment for their sick leave balances and then return to work must serve another five years of continuous local service before being eligible for sick leave payment upon termination.
 - Employees may not repurchase any sick leave for which they have been paid.
- (2) Health Plan Participation
- (a) Employees called for active duty have the right to continue participating in the LDSS's health care plan for 24 months beginning one month after the date leave without pay commences provided that they elect to do so and pay the full premiums. The coverage also applies to spouses and dependents.
 - (b) Upon commencement of leave without pay the employee is to receive a COBRA notice and Continuation of Coverage Election form. (Note: under USERRA, an employee who is on military leave for less than 31 days is entitled to participate in the health plan on the same terms as if employment was not interrupted.)
 - (c) The election rights are for the employee as well as other qualified beneficiaries.
 - (d) Upon returning from military leave an employee is entitled to participate in the LDSS's health plan, whether or not COBRA continuation coverage was elected, on the same terms as if the employment was not interrupted—e.g., the plan can not impose a waiting period or other exclusion provisions.

Chapter 4 – Leave

(3) Retirement Plan

Military leave is to be included in the calculation of years of service for the purpose of retirement benefits.

B. Reinstatement from Military Service

1. An employee who has been on military leave for a period of 31 days or longer should notify the LDSS of the employee's intention to be reemployed and the expected date of return.
2. An employee will be reinstated to the previous position or to a position comparable to the previous position in terms of pay, status, and location provided the employee:
 - a. Presents the LDSS with the certificate or release orders that confirm honorable separation from military service.
 - b. Returns to work within the following time periods (in addition to the time periods set forth below, reasonable time for safe travel and rest must be allowed):
 - (1) Military leave of less than 30 days – after 8 hours of rest the employee must report to work on the first regularly scheduled workday following return home from military service;
 - (2) Military leave of 31 to 180 days – must either send an application to return to work or report to work within 14 days of completing military service;
 - (3) Military leave of 181 days or longer – must either send an application to return to work or report to work within 90 days of completing military service.
 - (4) Service related incapacities – the reporting deadlines for employees who are hospitalized or convalescing because of a service related injury or illness are extended to up to two years.
 - c. Is qualified, or can reasonably be retrained, for the position that the employee:
 - (1) Would have held if employment had not been interrupted due to the military leave;
 - (2) Held at the time military leave commenced; or
 - (3) Of like seniority, pay, and status.

Chapter 4 – Leave

3. In determining the position to which the employee may be entitled, the “escalator principle” is to be used. Under the escalator principle, an employee is to be placed in the position with the highest priority in the re-employment options. The returning employee is to step back in the seniority escalator at the point the employee would have occupied had no military leave been taken. The position would not necessarily be the same job the person previously held.
4. When an employee becomes disabled during military service and cannot perform duties of the previous position and reasonable accommodations are not possible without undue hardship to the LDSS, efforts must be made to place the employee in the nearest comparable position for which the employee qualifies.
5. If employee no longer meets the minimum qualifications of the former position because of changes in job duties, the employee must meet the changed requirements within a reasonable time after reemployment or be offered a position requiring skills comparable to those required in the former position with regard to seniority, status, pay and location.
6. Reinstatement is not required if the LDSS’s circumstances have changed thereby making it impossible or unreasonable to reinstate the employee.
 - (a) If the employee’s formerly held position has been abolished, the employee shall be placed in a position comparable in status and pay to those previously held.
 - (b) If such comparable position is not available, the employee shall be considered affected by a lay-off and lay-off policies shall apply.

C. Family and Medical Leave Act

Employees returning from military service who request Family and Medical Leave upon return to work are entitled to additional considerations in the determination of their eligibility for Family and Medical Leave under USERRA. Refer to Section X. Family and Medical Leave for further policy specifications.

D. Annual Notice of Military Leave Rights

Annually the LDSS must provide every employee with a notice of the rights afforded under this policy. The LDSS can meet this obligation by providing an employee a copy of this policy or by referring the employee to the policy and having it available for distribution.

Chapter 4 – Leave

[This page intentionally left blank.]

Chapter 4 – Leave

Section V Educational Leave

Purpose

The purpose of this policy is to afford employees the opportunity to pursue educational pursuits that further their employment skills.

Scope

This policy applies to all employees.

A. Use of Educational Leave

1. An employee interested in pursuing an educational course or program that requires an absence from work must submit a written proposal to the Director setting forth the course or program, the benefits to the LDSS from the employee's attendance in this course, dates for the leave and suggested means to execute the employee's duties during the absence.
2. An employee may be granted educational leave for specific course(s) of study related to the work of the LDSS provided reasonable adequate provisions can be made for the performance of the employee's assigned duties.
3. Educational leave can be with or without pay. If leave with pay is granted its duration shall not be longer than three months.
4. The LDSS may consider a schedule adjustment in lieu of granting leave.

B. Return from Educational Leave

1. An employee returning from educational leave shall have the advantage of any merit increase that may have been due if the employee had remained continuously in the position.
2. The employee shall have all creditable years of service before the date of separation plus the period of educational leave considered in determining the rate of accrual.
3. An employee returning from educational leave with pay will be placed in his or her former position. With educational leave without pay, there is no obligation to hold the position vacant during the period of leave.

Chapter 4 – Leave

C. Educational Pursuits Required by the LDSS

If attendance in a course of study, a seminar, or conference is required by the LDSS, the hours in attendance count as hours worked and the employee is to receive his or her regular rate of pay. Educational leave shall not be used for this purpose.

Chapter 4 – Leave

Section VI Administrative Leave

Purpose

The purpose of this policy is to provide procedures for the use of administrative leave.

Scope

This policy applies to all employees.

A. Use of Administrative Leave

1. Administrative leave is leave with or without pay granted by the LDSS for an employee to be away from the worksite performing non-work activities. Administrative leave is not an entitlement and its use is purely discretionary on the part of the LDSS.
2. A LDSS may place an employee on administrative leave with pay when
 - a. The LDSS is investigating the employee for misconduct and the LDSS has not determined whether discipline is warranted; or
 - b. Other legitimate LDSS reasons.

B. Benefits While on Administrative Leave with Pay

An employee on administrative leave with pay receives all the benefits to which an employee on paid status would be entitled to including earned annual and sick leave. Administrative leave with pay, however, does not count as hours worked for the purposes of overtime.

Chapter 4 – Leave

[This page intentionally left blank.]

Chapter 4 – Leave

Section VII Bereavement Leave

Purpose

The purpose of this policy is to set forth the provisions for leave for the death of a family member.

Scope

This policy applies to all employees.

A. Use of Bereavement Leave

1. Leave for Death of Family Member

- a. An employee may use annual leave for absences that are due to the death of a family member. When annual leave is used, there is no maximum amount of leave that may be used for such purposes provided that the leave time is requested in advance or as soon as practical under the circumstances and the time requested is reasonable under the circumstances.
- b. During a calendar year, an employee may use three (3) days of sick leave for the death of a family member and no more than a total of six (6) days when there are multiple family member deaths during the calendar year. Under the Sick Leave policy, a family member (whether the relationship is by birth, adoption, foster care, marriage) is defined as parents, stepparents, spouse, children, stepchildren, siblings, grandparents, grandchildren and any relative by blood or marriage who resides in the employee's home.
- c. Leave without pay may also be granted for bereavement purposes subject to the rules set forth in that policy.
- d. Bereavement leave is permitted if taken within eight weeks of the death of the family member.

2. Death of Child or Spouse

For the death of an employee's child or spouse, the LDSS may grant the use of up to three weeks of accrued sick leave during the period immediately following the death.

Chapter 4 – Leave

[This page intentionally left blank.]

Chapter 4 – Leave

Section VIII Sick Leave

Purpose

The purpose of this policy is to provide employees with paid leave for time away from work for personal illness or injury, medical appointments that cannot be scheduled outside work hours, or for the illness or injury of a family member.

Scope

This policy applies to full-time and part-time employees who are not in temporary or emergency positions. Part-time status is working half-time hours or greater.

A. Americans With Disabilities Act

The Americans with Disabilities Act (ADA) requires consideration of accommodations for qualified employees who have disabilities. Such accommodation may be in the form of intermittent sick leave. Further policy regarding ADA can be found in Section X.O. The Family Medical Leave Act (FMLA), the American with Disabilities Act (ADA) as amended and the Pregnancy Discrimination Act (PDA).

B. Sick Leave Accrual

1. Rate

Employees earn paid sick leave on a pay period basis as follows:

- a. A full-time employee earns sick leave at the rate of 1.25 days a month.
- b. A part-time employee earns sick leave at a proportionate rate: e.g., and employee working half-time would earn $\frac{1}{2}$ day of sick leave monthly and an employee working three quarters time would earn $\frac{3}{4}$ day a month.
- c. For LDSS that do not have monthly pay periods, sick leave is accrued each pay period in an amount proportionate to that earned on a monthly basis: e.g., for LDSS with a semi-monthly pay period, the rate would be $\frac{1}{2}$ day for each pay period for full time employees (for half-time employees the rate would be $\frac{1}{4}$ day).

Chapter 4 – Leave

2. Monthly and Semi-monthly Sick Leave Accrual Charts:

40 Hour Workweek (8 Hours per Day)

Monthly Accrual Rate in Days	Monthly Accrual Rate in Hours	Semi-Monthly Accrual Rate in Hours
1.25	10.00	5.00

37.5 Hour Workweek (7.5 Hours per Day)

Monthly Accrual Rate in Days	Monthly Accrual Rate in Hours	Semi-Monthly Accrual Rate in Hours
1.25	9.375	4.6875

35 Hour Workweek (7 Hours per Day)

Monthly Accrual Rate in Days	Monthly Accrual Rate in Hours	Semi-Monthly Accrual Rate in Hours
1.25	8.75	4.375

3. Accrual

Sick leave does not accrue until the end of the pay period in which it is earned and may not be used until the first day of the following pay period.

4. Effect of Leave without Pay on Accrual

If an employee is on leave without pay at any time during the pay period, no sick leave is earned for that pay period.

5. Carry Over

There is no limit to the amount of sick leave that is permitted to be carried over to the next year.

C. Use of Sick Leave

1. Use

Sick leave cannot be used until it is accrued. There is no borrowing against future accruals.

2. Reasons for Use

Sick leave may be used for either personal or family reasons.

a. Employee’s Own Use of Sick Leave

Chapter 4 – Leave

Unless the LDSS has set a limitation, an employee may use the full amount of accrued sick leave for the employee's own care as follows:

- (1) When medically necessary and the employee is unable to perform the essential functions of the position;
- (2) Pregnancy and child-birth related medical conditions;
- (3) Medically documented chronic conditions;
- (4) Medical appointments that cannot be scheduled outside of work hours (regularly scheduled, routine appointments should be scheduled outside of work hours, when possible); or
- (5) Family and Medical Leave Act leave.

b. Use of Sick Leave for Family Purposes

Unless the LDSS has established different limits, as approved by the local board and the LDSS, an employee may use accrued sick leave for the care of family members as follows:

- (1) Circumstances in which sick leave may be used for family.
 - (a) When a family member has a medical condition that requires the employee to assist in the family member's care or in transporting the family member;
 - (b) The death of a family member;
 - (c) Family and Medical Leave Act leave.
- (2) A family member for the purposes of circumstances (a) and (b) above (whether the relationship is by birth, adoption, foster care, or marriage) includes parents, stepparents, spouse, children, step-children, siblings, grandparents, grandchildren and any relative by blood or marriage who resides in the employee's home (refer to Section X. Family and Medical Leave Act leave).
- (3) During a calendar year, an employee may use up to eight days of accrued Sick Leave for family sick leave.

D. Notice and Approval

1. Advanced Notice

Chapter 4 – Leave

If an employee has a medical condition that necessitates an absence from work, the employee must notify the supervisor on the leave request form as soon as the absence is foreseeable. Medical conditions that have foreseeable absences include but are not limited to elective and non emergency surgery, regular or routine medical appointments, pregnancy, and childbirth.

2. Notice and Approval Required at All Times

For absences that are not foreseeable, or for emergency situations, the employee must provide notice as soon as practicable. **Until notice is provided and the request is approved, the time will count as leave without pay.**

E. Verification of Need for Sick Leave

1. Verification of Need May Be Required

Upon the request of the LDSS, the employee must provide verification to establish the use of sick leave. The use of sick leave will not be approved until requested verification is provided.

2. Types of Verification

The following types of verification will be deemed sufficient:

- a. FMLA health care provider certification;
- b. Statement from the medical provider that because of the medical condition the employee cannot perform the essential functions of the position, the medical facts that support this conclusion, and the estimated period of time that the employee will be absent from work; or
- c. Evidence that there was a medical appointment that could not have been scheduled during non-work hours.

3. Re-Verification

If an employee is absent for an extended period of time or on a reoccurring basis, the LDSS may request, and the employee must submit, additional verification for the need for the absence. Continued use of sick leave can be conditioned on providing the requested verification.

F. Treatment of Sick Leave upon Change in Status

1. Payment at Termination

Chapter 4 – Leave

- a. An employee must have worked continuously for the same LDSS for five years or longer to be entitled to a payment for accrued sick leave at termination or death.
- b. When employment is terminated, the employee may be paid for accrued sick leave in a lump sum up to the maximum allowable amount. The amount of payment is the lesser of 25% of the accrued leave or the maximum payout amount as determined by the local Board and approved by VDSS.
- c. For the purpose of unemployment compensation such leave payment will be allocated as wages for the equivalent daily/weekly periods as the employee would have received had employment continued.

2. Payment at Death

In the case of death, payment shall be made to the executor of the estate. If no executor has been qualified by a court, and if sixty days have lapsed, payment for accrued sick leave, if less than \$15,000, will be made to the surviving spouse and if no surviving spouse, then to the next of kin as provided in § 64.1-132.3 of the *Code of Virginia*.

3. Right to Repurchase

An employee, who is rehired by the same LDSS within twelve (12) months from the date of a layoff or an employee who is reinstated by a grievance panel, may have the sick leave balances restored by paying the amount of any payout received at termination for accrued sick leave.

4. Leaves of Absence are Not Terminations

Educational leave, FMLA leave, military leave, and other forms of extended leave are not considered terminations for the purposes of receiving payment for accrued sick leave.

G. Transfer of Leave

As an inducement to accept an offer of employment, an LDSS may offer to credit an employee with some or all of the sick leave balances that would be uncompensated when the employee resigns from employment with another LDSS or the Virginia Department of Social Services. An employee may only be credited with sick leave if there is no break in service.

Chapter 4 – Leave

H. Change in Employment Status

If the status of an employee is changed from temporary to probationary, regular, or restricted, the provisions of Section IX. Disability Leave Program may apply. The temporary employment period may be considered part of the total service in determining the rate at which the allowance for annual leave shall accrue in the new status.

I. Employee Accountability

1. The employee is responsible for knowing the amount of sick leave balances that should have been accrued.
2. An employee will be required to reimburse the LDSS for leave taken if there was not sufficient accrued leave to cover the time taken. Reimbursement may be in the form of monetary reimbursement or charging the time to other accrued paid leave. LDSS may work out a repayment plan with the employee.
3. If an employee is on leave without pay at any time during the pay period, no sick leave is earned for that pay period.
4. No matter how urgent the need for the leave may be, the LDSS has no authority to grant paid leave when there is not sufficient accrued leave.

Chapter 4 – Leave

Section IX Disability Leave Program

Purpose

To provide an alternative leave system for use by local boards to address the leave needs of employees covered under employer paid short and long term disability programs. Local boards may choose to allow employees covered under short and long term disability programs to follow: 1) State Board sick leave accrual policy; 2) local jurisdiction's leave policy; or 3) State Board disability leave program policy. If the local jurisdiction's leave policy is chosen, it must apply to all local jurisdiction employees, including employees of the local department of social services.

It is recommended that local departments work with their local boards and their locality to determine the best approach for local department employees under a disability plan. If a local jurisdiction policy is chosen, local departments will submit an updated Local Policy Request Form to VDSS HR for approval.

Scope

This policy applies to full-time or part-time employees who are not in temporary or emergency positions and whose local boards have chosen to limit their sick leave as part of a short and long term disability plan. This group of employees includes full-time employees hired or rehired on or after January 1, 2014; full time employees who choose to opt-in to the hybrid retirement plan; or other employees as determined by the local board.

A. Sick Leave Credit – Sick leave will be credited on the following basis:

1. Sick Leave Credit

- a. Full-time employees employed between January 1 and June 30 or other current full-time employees as determined by their local boards are credited the entire sick leave credit on the first day of their first full payroll period.
- b. Full-time employees participating in the hybrid retirement plan and hired July 1 or later or current employees who opt in to the hybrid retirement plan are credited 50% of the sick leave credit on the first day of their first full pay period or on the effective date of their election as applicable.
- c. Part-time employees hired on January 1, 2014 or later may be granted a proportionate sick leave credit as determined by their local boards.
- d. In subsequent years, the sick leave credit will be credited to eligible employees on the first day of the first full payroll period in January.

Chapter 4 – Leave

2. Sick Leave Credit Charts

Eligible full-time employees hired from January 1 and June 30:

40 Hour Workweek (8 Hours per Day)

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0 through 4	8	64
5 through 9	9	72
10 and beyond	10	80

37.5 Hour Workweek (7.5 Hours per Day)

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0 to 4	8	60
5 to 9	9	67.5
10 and beyond	10	75

35 Hour Workweek (7 Hours per Day)

Years of Service with LDSS	Sick Leave Credit in Days	Leave Credit in Hours
0 to 4	8	56
5 to 9	9	63
10 and beyond	10	70

Eligible full-time employees hired from July 1-December 31:

40 Hour Workweek (8 Hours per Day)

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0 to 4	4	32
5 to 9	4.5	36
10 and beyond	5	40

37.5 Hour Workweek (7.5 Hours per Day)

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0 to 4	4	30
5 to 9	4.5	33.75
10 and beyond	5	37.5

Chapter 4 – Leave

35 Hour Workweek (7 Hours per Day)

Years of Service with LDSS	Sick Leave Credit in Days	Sick Leave Credit in Hours
0 to 4	4	28
5 to 9	4.5	31.5
10 and beyond	5	35

3. Effect of Leave without Pay on Sick Leave Credit

If an employee is on leave without pay on the day that the sick leave credit is granted, the sick leave credit is not granted until the employee is on paid status.

4. No Carry Over or Payment Upon Separation

The sick leave credit does not accrue. No carryover of the sick leave credit from year to year is allowed. Sick leave credit balances are not paid out upon separation.

5. Use of Sick Leave Credit

a. Use

The sick leave credit cannot be used until it is granted. There is no borrowing against future credits.

b. Reasons for Use

The sick leave credit may be used for either personal or family reasons.

(1) Employee's Own Use of Sick Leave Credit

Unless the LDSS has set a limitation, an employee may use the full amount of the sick leave credit for the employee's own care as follows:

- (a) When medically necessary and the employee is unable to perform the essential functions of the position;
- (b) Pregnancy and child-birth related medical conditions;
- (c) Medically documented chronic conditions;
- (d) Medical appointments that cannot be scheduled outside of work hours (regularly scheduled, routine appointments should be scheduled outside of work hours, when possible); or

Chapter 4 – Leave

(e) Family and Medical Leave Act leave (see Section X).

(2) Use of Sick Leave Credit for Family Purposes

Unless the LDSS has established different limits, as approved by the local board and the LDSS, an employee may use the sick leave credit for the care of family members as follows:

(a) Circumstances in which the sick leave credit may be used for family:

- (i) When a family member has a medical condition that requires the employee to assist in the family member's care or in transporting the family member;
 - (ii) The death of a family member;
 - (iii) Family and Medical Leave Act leave (see Section X).
- (b) A family member for the purposes of circumstances (i) and (ii) above (whether the relationship is by birth, adoption, foster care, marriage, or legal custody or guardianship) includes parents, stepparents, spouse, children, stepchildren, siblings, grandparents, grandchildren and any relative by blood or marriage or through legal custody or guardianship who resides in the employee's home. For Family and Medical Leave Act leave see Section X.
- (c) During a calendar year, an employee may use up to 33% of their unused sick leave credit balance for family sick leave.

6. Sick Leave Balances of Employees Opting In to the Hybrid Retirement Plan

a. Purpose

To address the sick leave balances of employees opting-in to the VRS hybrid retirement plan or other employees whose local boards have decided to limit sick leave in connection with participation in a short and long term disability plan.

b. Use of Previous Sick Leave Balance

Upon participation in the local short and long term disability plan, the sick leave balances of eligible employees will be frozen. At the discretion of the local board, these frozen sick leave balances may be used as follows:

- To supplement income during periods when an employee is receiving short or long term disability benefits. Total income replacement from the disability

Chapter 4 – Leave

benefit and leave cannot exceed 100% of an employee's pre-disability income per pay period.

- For any allowable use of accrued sick leave, as noted in Chapter 4. Section VIII. C., during the one year waiting period prior to disability benefits.

The local board may also choose to:

- Make a payout of the frozen sick leave balance. Payout options include:

- 1) Treatment of frozen sick leave upon Change in Status

Upon a change in status, treatment of frozen sick leave balances should be consistent with the treatment of accrued sick leave balances as noted in Chapter 4, Section VIII.F.

- 2) Prior to separation, payout of the remaining frozen sick leave balance may be made as follows:

- (a) A one-time lump sum payout up to the maximum allowable amount. The amount of payment is the lesser of 25% of the remaining frozen sick leave balance or the maximum payout amount as determined by the local board and approved by VDSS; or

- (b) A lump sum payout up to the maximum allowable payout, whereby payment is split over two or more pay periods. The total of all frozen sick leave payouts to an employee cannot exceed the lesser of 25% of the remaining frozen sick leave balance or the maximum payout amount as determined by the local board and approved by VDSS.

- Convert a portion of each employee's frozen sick leave balance to annual leave (not to exceed the maximum carryover for annual leave).

- c. Compensation Plan

The option or options approved by the local board to address the sick leave balances of employees opting in to the hybrid retirement plan will be documented on the Local Department of Social Services Compensation Plan.

B. Family and Personal Leave Credit – Family and personal leave will be credited on the following basis:

Chapter 4 – Leave

1. Family and Personal Leave Credit

- a. Eligible full-time employees employed from January 1 to June 30 will be credited with the entire annual family and personnel leave credit on the first day of their first full pay period.
- b. Eligible full-time employees hired on or after July 1 and those current employees who opt-in to the hybrid retirement plan will have family and personal leave credited at 50% of the annual credit on the first day of the first full pay period after the effective date of their election or hire date as applicable.
- c. Part-time employees hired on January 1, 2014 or later may be granted a proportionate annual family and personal leave credit as determined by their local boards.
- d. In subsequent years, eligible employees will have the entire annual family and personal leave credit credited on the first day of the first full payroll period in January.
- e. Family and personal leave may not be used before it is credited.

2. Family and Personal Leave Credit Charts

Employees with less than 120 months of employment:

Employment (or election) Date	Amount for 40 hour work week/ 8 hour work day	Amount for 37.5 hour work week/ 7.5 hour work day	Amount for 35 hour work week/ 7 hour work day
January 1- June 30	32 hours (4 days)	30 hours (4 days)	28 hours (4 days)
July 1- December 31	16 hours (2 days)	15 hours (2 days)	14 hours (2 days)

Employees with 120 or greater months of employment:

Employment (or election) Date	Amount for 40 hour work week/ 8 hour work day	Amount for 37.5 hour work week/ 7.5 hour work day	Amount for 35 hour work week/ 7 hour work day
January 1- June 30	40 hours (5 days)	37.5 hours (5 days)	35 hours (5 days)
July 1- December 31	20 hours (2.5 days)	18.75 hours (2.5 days)	17.5 hours (2.5 days)

Chapter 4 – Leave

3. Effect of Leave without Pay on Family and Personal Leave Credit

If an employee is on leave without pay on the day that the family and personal leave is granted, the family and personal leave credit is not granted until the employee is on paid status.

4. No Carryover or Payment Upon Separation

The family and personal leave credit does not accrue. No carryover of the family and personal leave credit from year to year is allowed. Family and personal leave credit balances are not paid out upon separation.

Chapter 4 – Leave

[This page intentionally left blank.]

Chapter 4 – Leave

Section X Family and Medical Leave Act (FMLA)

Purpose

This policy sets forth the requirements for obtaining leave under the Family and Medical Leave Act.

More detailed information regarding the Family and Medical Leave Act (FMLA) can be found at the Department of Labor (DOL) FMLA website <http://www.dol.gov/whd/fmla/index.htm>.

Scope

This policy applies to all employees who meet the eligibility criteria.

A. Definitions

1. Child (Son or Daughter)

A biological, adopted, foster child, stepchild, legal ward, or a child of a person standing in place of the parent. The child must either be under age 18 or be age 18 or older and incapable of self-care because of a mental or physical disability.

2. Employment Benefits

All benefits provided or made available to employees including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational leave, and pensions.

3. Equivalent Position

One with the same pay, benefits and working conditions (shift and schedule) and the same or substantially similar duties, conditions, privileges, and status which require equivalent skill, effort, responsibility and authority

4. Covered Servicemember

A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time

Chapter 4 – Leave

during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

5. Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) is a federally mandated program that was signed into law on February 5, 1993 and amended by the National Defense Authorization Act for Fiscal Year 2008 and 2010. Enforcement actions under FMLA can be brought by either the United States Department of Labor or individual employees. FMLA provides eligible employees with twelve (12) weeks of job protected leave for the serious health condition of the employee or the employee's family member or for adoption, placement, or the birth of a child, or up to 26 weeks of unpaid leave to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the service member.

6. Family Member

Child, spouse or parent.

7. Health Care Provider

a. The Act defines "health care provider" as:

- (1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or
- (2) Any other person determined by the Secretary to be capable of providing health care services.

b. Others "capable of providing health care services" include only the following categories of medical professionals as they perform services within the scope of their practice as defined under state law:

- (1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist);
- (2) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants;
- (3) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object

Chapter 4 – Leave

to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement;

- (4) Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and
- (5) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country.

c. The phrase "authorized to practice in the State" as used in this section means that the provider must be authorized to diagnose and treat physical or mental health conditions.

8. Incapacity

Inability to work, attend school, perform other regular daily activities due to a serious health condition.

9. Intermittent Leave

A leave schedule permitting the employee to take leave periodically for a few hours a day (less than eight hours), or for a few days, on an as-needed basis. Such leave includes time taken for medical appointments or treatments.

10. Key Employees

Employees who are among the highest paid 10% of the LDSS workforce.

11. Parent

Biological parent or individual who stood in place of the parent of the employee and was charged with the duties and responsibilities of the parent.

12. Qualifying Exigency

A reason for taking FMLA leave, arising out of the fact that the employee's spouse, son, daughter or parent is on active duty in the Armed Forces, or has been notified of an impending call or order to active duty in the National Guard or Reserves. Qualifying exigencies fall into eight categories: 1) short-notice deployment, 2) military events and activities, 3) childcare and school related activities, 4) financial and legal

Chapter 4 – Leave

arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities, and 8) additional activities which arise out of active duty, or call to active duty, provided that the employee and agency agree.

13. Reduced Schedule

A work schedule less than the usual number of hours worked per workweek or per workday.

14. Serious Health Condition

An illness, injury, impairment or physical or mental condition that involves inpatient care or either:

- a. A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:
 - (1) Treatment two or more times within 30 days by or under the supervision of a health care provider the first of which must occur within seven days of the first day of incapacity; or
 - (2) One treatment by a health care provider, within the first seven days of incapacity, with a continuing regimen of treatment; or
- b. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or
- c. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visit to a health care provider at least twice a year, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or
- d. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or
- e. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

Chapter 4 – Leave

15. Spouse

The person with whom an individual has entered into marriage as defined and recognized under the laws of the Commonwealth.

16. Twelve Month Period

For the purpose of calculating FMLA leave, an LDSS may use a calendar, fiscal year, another fixed 12-month period, or a rolling 12-month period looking back from the date the leave is requested. The whole agency must use the same methodology when calculating Family Medical Leave Act leave.

B. Eligibility Requirements

To be eligible to take Family Medical Leave Act leave, the following criteria must be met by full time and part time employees:

1. The employee must have been employed by the LDSS for a total of at least 12 consecutive or non-consecutive months in the past seven years.
2. For the 12 months immediately proceeding the first day of the requested leave, the employee must have worked at least 1,250 hours as hours worked (paid leave is not counted).
 - a. Employees returning from military service who request Family and Medical Leave upon return to work must have the portion of the year they were on military leave, engaged in military activity or while deployed added to the time they worked for the employer during the year to determine if they meet the 1250 hour requirement in the determination of their eligibility for Family and Medical Leave under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).
3. Twelve weeks of FMLA leave must not have been used in the current 12 month period.
4. For part time employees, the amount of FMLA leave will be equivalent to twelve times their normal workweek, not to exceed 12 weeks.

C. Qualifying Reasons

Eligible employees may take up to 12 weeks of unpaid Family Medical Leave Act leave per leave year for the following reasons:

Chapter 4 – Leave

1. For Family Member's Care

- a. The birth of a child (to be taken within 12 months of the child's birth);
- b. The placement of a child with the employee for adoption or foster care (to be taken within 12 months following date of placement);
- c. Serious health condition of a spouse, son, daughter or parent who is unable to care for him or herself.

2. For Employee's Care

A serious health condition that renders the employee unable to perform any one of the essential functions of his or her position.

3. Qualifying Exigency

A qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is an active duty military member of the National Guard or Reserves, or has been notified of an impending call or order to active duty in support of a contingency operation.

D. Restrictions on Usage

1. Parental Leave

- a. Leave taken for the birth or placement of a child must be used within the 12 months following the birth/placement.
- b. If both parents work for the LDSS, they are limited to a combined total of 12 weeks of FMLA leave.

2. FMLA leave is Not Cumulative

Any unused leave cannot be carried over to the next 12-month period.

3. Short-Term Conditions

FMLA leave may not be used for short-term conditions for which treatment and recovery are brief.

4. Appointments with Health Care Provider

Chapter 4 – Leave

Routine appointments with a health care provider should be scheduled whenever possible during non- work hours.

E. FMLA leave is unpaid.

1. FMLA leave is unpaid. The LDSS may require, or the employee may request, the use of paid leave concurrently with FMLA leave. Employees have the option of using paid leave, as appropriate under each particular leave policy, for absences covered under the Family and Medical Leave Act. An agency may designate such leave as Family and Medical Leave Act leave, if it meets the conditions set forth in this policy. See Form WH-382 entitled *Designation Notice (Family and Medical Leave Act)* found at <http://www.dol.gov/whd/forms/WH-382.pdf>.
2. **Although paid time off may be required by the LDSS or requested by the employee to be used at the same time as FMLA leave, this does not apply to compensatory time. If the use of compensatory time is approved, it does not count toward the 12 week entitlement of FMLA.**

F. Procedures Regarding Usage

1. Request from Employee

The Employee should submit a written request to his/her supervisor at least 30 calendar days in advance or as soon as practicable. (Notice may be given by a family member if employee is unable to provide notice.)

2. Notice of Eligibility and Rights & Responsibilities

The form *Notice of Eligibility and Rights & Responsibilities (WH-381)* found at <http://www.dol.gov/whd/forms/WH-381.pdf> must be given to the employee five (5) business days from the request for leave under FMLA. Once all of the required information requested on the form is completed, the Local Department of Social Services (LDSS) must inform the employee within five (5) business days whether or not the leave will be designated as FMLA leave and count towards the employee's leave entitlement. This determination must be provided using the *Designation Notice (WH-382)* found at <http://www.dol.gov/whd/forms/WH-382.pdf> .

3. Certification from Health Care Provider

A request for FMLA must be supported by either a *Certification of Health Care Provider for Employee's Serious Health Condition (WH-380-E)* or a *Certification of Health Care Provider for Family Member's Serious Health Condition (WH-380-F)*. These forms can be located at <http://www.dol.gov/whd/forms/WH-380-E.pdf> and <http://www.dol.gov/whd/forms/WH-380-F.pdf>. **Medical certification shall be**

Chapter 4 – Leave

obtained by the employee and returned to his/her agency within 15 calendar days of the request or when feasible or upon return to work from an absence that may qualify under the FMLA (absent extenuating circumstances). If an employee fails to provide certification, recertification, or clarification in a timely manner then the agency may deny FMLA leave until the required certification is provided.

4. Second and Third Health Care Provider Opinions

a. Second Opinion

In general, in any case in which the employer has reason to doubt the validity of the certification provided, the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified on the *Certification of Health Care Provider for Employee's Serious Health Condition (WH-380-E)* or a *Certification of Health Care Provider for Family Member's Serious Health Condition (WH-380-F)*. The health care provider designated or approved shall not be employed on a regular basis by the employer.

b. Resolution of Conflicting Opinions – Third Opinion

In general, in any case in which the second opinion differs from the opinion in the original certification provided, the employer may require, at the expense of the employer, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information certified.

The opinion of the third health care provider concerning the information certified shall be considered to be final and shall be binding on the employer and the employee.

- (1) Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to FMLA benefits, including maintenance of group health benefits.
- (2) If the health care providers' certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave.
 - (a) A copy of the second (and third) medical opinions must be provided to the employee if requested. Requested copies are to be provided within

Chapter 4 – Leave

two business days unless extenuating circumstances prevent such action.

- (b) When an employee is required to obtain a second (or third) opinion the LDSS must reimburse an employee or family member for any reasonable “out of pocket” travel expenses incurred to obtain these opinions.
- (c) The LDSS may not require the employee or family member to travel outside normal commuting distance for purposes of obtaining the second or third medical opinion except in very unusual circumstances.
- (d) Without the written consent of the employee, the LDSS should not discuss with the health care provider the serious health condition of the employee or family member nor should the LDSS require more information than is requested on the certification form.

c. Approval of Leave

The LDSS must respond to an employee’s request for FMLA leave on the form entitled *Designation Notice (WH-382)*. Approval or denial of FMLA leave requests must be given within five (5) business days of receiving the request or within five (5) business days of receiving all of the required documentation from the employee. This form can be found at <http://www.dol.gov/whd/forms/WH-382.pdf>.

5. Provisional Designation of Leave

Without a request from an employee, the LDSS may designate provisional absences as FMLA leave if the LDSS has a reasonable basis that such leave qualifies. The LDSS may also designate provisional leave at the request of the employee pending submission of the health care provider’s certification. Such designation may be done even if the employee has been granted permission to use paid leave. Upon receipt of the medical certification, the LDSS must notify the employee of approval or denial on the form entitled *Designation Notice (WH-382)* found at <http://www.dol.gov/whd/forms/WH-382.pdf>.

6. Designating FMLA Leave Retroactively

The agency may go back 5 business days from the date of designation, to include those 5 business days under FMLA.

Chapter 4 – Leave

G. Intention to Return to Work

The LDSS may require an employee to report periodically during the leave period on intention to return to work. This includes both Intermittent and full-time FMLA leave.

H. Intermittent Leave or Leave on a Reduced Schedule

1. Intermittent/Reduced Schedule Leave

When medically necessary, the employee may take FMLA leave intermittently or on a reduced work schedule. The amount of leave is limited to no more than 480 hours in a FMLA leave year for full time employees. The process for requesting intermittent or reduced schedule leave is the same as that for requesting full time leave.

2. Advanced Approval for Care of a Newborn or Recently Placed Child

Only if approval is granted in advance, may an employee take leave intermittently or have a reduced schedule to care for a newborn child, or a child that has been placed with the employee for adoption or foster care. (This does not apply if the leave is taken because of the serious health condition of the child.)

3. Reassignment During Intermittent Leave or Reduced Schedule Leave

An employee may be required to transfer temporarily during the period of intermittent or a reduced leave schedule to an available alternative position for which the employee is qualified and which better meets the LDSS's needs. Such alternative position must have equivalent pay and benefits but does not have to have equivalent duties.

I. FMLA Military Entitlements

Under the FMLA, there are military leave entitlements in the form of qualifying exigency leave and military caregiver leave for a covered service member.

1. Qualifying Exigency Leave

An employee may take family and medical leave for qualifying exigencies while his or her spouse, son, daughter, or parent who is member of the Armed Forces on active duty or a member of the National Guard or Reserves called to active duty status in support of a contingency operation.

Chapter 4 – Leave

Employees should submit a complete and sufficient “*Certification of Qualifying Exigency for Military Family Leave*” (Form WH-384) form to their supervisor.

The first time an employee requests leave because of a qualifying exigency, he or she must provide a copy of the covered military member’s active duty orders or other documentation issued by the military. This documentation must include the dates of the covered military member’s active duty service. This information need only be provided once. A copy of new active duty orders or other documentation issued by the military shall be provided 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 covered military member. This form entitled: *Certification for Qualifying Exigency for Military Family Leave* can be found at <http://www.dol.gov/whd/forms/WH-384.pdf> .

2. Military Caregiver Leave

An eligible employee is entitled to receive up to 26 weeks of unpaid leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember. The single 12-month period commences the first day leave is taken to care for the covered service member and expires 12 months later.

Note: An eligible employee is entitled to a combined total of 26 weeks of unpaid leave during a single 12-month period. This includes 12 weeks of FMLA leave for any FMLA qualifying reason.

Example: An eligible employee may take 16 weeks of family and medical leave to care for a covered service member and 10 weeks of family and medical leave to care for a newborn child.

The employee should submit a completed “*Certification for Serious Injury or Illness of Covered Service member*” form (U.S. Department of Labor Form WH-385) to his/her supervisor. This form can be found at <http://www.dol.gov/whd/forms/WH-385.pdf>.

J. Effect on Employment Benefits

1. Health Care Coverage

- a. During any FMLA leave, the employee’s participation under any group health plan is continued on the same basis as coverage would have been provided had the employee been continuously employed during the leave period.

Chapter 4 – Leave

- b. Employees who are on leave under FMLA will pay the same portion of their health care premiums as they would if they were not on leave.
- c. The failure to timely make premium payments will terminate coverage under the same terms as if employees failed to pay premiums while employed.
- d. If an employee fails to return to work at the end of leave under FMLA, the LDSS may recover the LDSS share of premiums paid during the period of leave. However, there will be no recovery of premiums if the employee fails to return to work as a result of:
 - (1) the onset, recurrence, or continuation of serious health conditions that would have would have entitled the employee to the FMLA leave; or
 - (2) other circumstances beyond the employee's control.

2. Other Benefits

Employees on unpaid FMLA leave are entitled to the same benefits as employees on leave without pay.

LWOP is to be reported to the Virginia Retirement System (VRS). VRS employer contributions are based on creditable compensation earned by an employee each month. An employer may establish a minimum number of hours an employee must work to be eligible for the employer contribution. An employee's years of service may be affected by such absence.

K. Workers' Compensation and FMLA

When a Workers' Compensation injury causes an absence that would otherwise qualify under the FMLA, the two leaves may run concurrently and count towards FMLA leave.

L. Returning From Leave

1. Job Restoration

Upon returning from Family and Medical Leave Act leave, an employee is entitled to be reinstated to their original position, or an "equivalent position," one with comparable duties, terms, conditions, compensation, and privileges of the employee's previous position.

2. Key Employee

Chapter 4 – Leave

If an employee's position is determined to be key (within the highest paid 10% of the salaried workforce in the LDSS), job restoration may be denied if the following procedures have been taken:

- a. The LDSS gives written notice to the key employee at the time the employee requests FMLA leave or as soon as practicable thereafter that the employee qualifies as a Key Employee. The notice must also state the potential consequences with respect to reinstatement and maintenance of health benefits if the employee is denied job restoration.
- b. If a determination is made that a substantial and grievous economic injury to the LDSS's operations will result if the Key Employee is reinstated at the end of the leave, the LDSS shall notify the employee in writing of its determination and that it intends to deny job restoration.
 - (1) This notice must be given either in person or by certified mail.
 - (2) This notice must explain the basis for the finding that substantial and grievous economic injury will result.
 - (3) If leave has commenced, the Key Employee must be allowed a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return.
 - (4) If a Key Employee does not return to work in response to the notice, the employee continues to be entitled to maintenance of health benefits during the remaining period of FMLA leave and the LDSS must continue payment of its share of health benefit premiums.
 - (5) A Key Employee's rights under FMLA continue unless and until the employee either gives notice that he or she no longer wishes to return to the position or the LDSS denies the reinstatement at the conclusion of the leave period.
- c. A Key Employee is entitled to request reinstatement at the end of the leave period even if the employee did not return to work in response to the notice. At the time of the request, the LDSS must again determine whether there will be substantial and grievous economic injury if the employee is reinstated. If it is determined that substantial and grievous economic injury will result, the employee must be notified in writing, delivered in person or by certified mail of the denial of restoration.

Chapter 4 – Leave

- d. Although the employee may be denied job restoration, the employee remains on FMLA leave status for the requested period of leave and all benefits of FMLA continue until the end of the leave.

M. FMLA Records Management

Agencies must make, keep and preserve records pertaining to their obligations under FMLA. Records must be kept for at least three years and must include the information listed below:

1. Basic payroll and identifying employee data, including: name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.
2. Leave designated as FMLA, both paid and unpaid, and the dates employees took it. (If FMLA leave is taken in increments of less than a day, the hours must be noted.)
3. Copies of employee's notices of leave furnished to agency.
4. Any documents (including written and electronic records) describing employee benefits or agency policies and practices regarding the taking of paid and unpaid leaves.
5. Records of premium payments.
6. Records of any dispute between the agency and an employee regarding designation of leave as FMLA, including any written statement from the agency or employee of the reasons for the designation and for the disagreement.
7. Records and documents relating to medical certifications, re-certifications or medical histories of employees or employee's family members are to be maintained in separate files/records and treated as confidential medical records except:
8. Supervisors and managers may be informed regarding necessary restrictions on work duties and necessary accommodations.
9. First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment.
10. Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

Chapter 4 – Leave

N. Violations

An employee who believes that FMLA benefits have not been applied consistently with the provisions of this policy or the law may make a complaint to the Director and if not resolved may file a complaint with the U.S. Department of Labor, Wage and Hour Division. A non-probationary employee may also initiate a grievance.

O. The Family Medical Leave Act (FMLA), the American with Disabilities Act (ADA) as amended and the Pregnancy Discrimination Act (PDA)

The FMLA, ADA and PDA all require a covered employer grant leave to an employee in certain circumstances. Unlike the FMLA, there is no eligibility period for leave granted under the provisions of the ADA or the PDA. Requests for leave under these provisions should be made to the employee's supervisor.

The ADA requires employers to consider reasonable accommodation requests for qualified employees in order to perform essential job functions. The accommodation can include a modified work schedule and may include leave requests. There is no set leave period mandated. The leave could be granted as requested by the employee unless doing so would result in "undue hardship" to the employer (see Chapter 1 for more information about ADA).

The Pregnancy Discrimination Act (PDA) is an amendment to Title VII of the Civil Rights Act of 1964. Discrimination on the basis of pregnancy, childbirth, or related medical conditions is unlawful sex discrimination under Title VII, which covers employers with 15 or more employees, including state and local governments. The PDA requires that leave be administered in a way that does not discriminate based on gender.

Chapter 4 – Leave

[This page intentionally left blank.]

Chapter 4 – Leave

Section XI Leave Sharing

Purpose

The following are suggested procedures for the implementation of a leave sharing program for those LDSSs that elect to have such a program. An LDSS has the discretion to design a program that fits its needs.

Scope

This policy applies to employees in regular or restricted positions.

A. Eligibility

1. Exhaustion of Paid Leave Balances

An employee who desires to receive donated leave must have used all paid leave that is available for such absences (e.g., annual, sick, compensatory, special duty).

2. Family and Medical Leave Act Purposes

An employee who requests donated leave may only use such for a “serious health condition” of the employee, the employee’s immediate family member, or parental care, as defined in the Family and Medical Leave Act Policy. The fact that the employee may not otherwise qualify for FMLA leave (e.g., has exhausted the allowed 12-weeks or has not worked the 1250 hours in the past 12 months) is not disqualifying under this policy.

3. Certification of Health Care Provider

An employee is not eligible for donated leave until such time as the FMLA *Certification of Health Care Provider* form (Form WH-380*E or WH-380-F) establishes qualification for such leave. The employee will remain ineligible until the LDSS determines that the information on the form is sufficient to substantiate the need for the leave.

4. Disqualifying Absences

Employees in the following categories are ineligible for leave sharing donations:

- An employee who is on a disciplinary suspension;

Chapter 4 – Leave

- An employee who is absent because of an occupationally related illness or injury that falls within that definition under the Virginia Worker's Compensation Act (whether or not benefits have been received under the Act),
- an employee who is absent because of an injury or illness that is deliberately self inflicted
- or an employee who is absent because of an injury or illness which has occurred while the employee was engaging in an unlawful act.

5. Waiting Period

An LDSS may require a waiting period to establish eligibility for leave share donations.

B. Requests / Approvals

Each LDSS participating in this program must develop a form by which an employee may request donated leave. The form should be designed so that when the employee is physically or mentally unable to make the leave request, an agent may make the request on behalf of the employee.

C. Status While on Donated Leave

An employee must be on leave without pay (LWOP) status in order to receive donated leave. Donated leave is intended to provide supplemental compensation only and does not place the employee on the equivalent of paid leave status. Accordingly, the LWOP policy benefit provisions apply to this leave period.

D. Discretionary Benefits

In developing a policy on leave sharing, an LDSS may provide greater benefits than those allowed under the LWOP policy. These augmented benefits may include

1. Health Benefits

The LDSS may pay out of local funds its portion of the health care premium for up to 12 months inclusive of the health care premium payments required under FMLA.

2. Payroll Deductions

Federal and state withholding payments will be deducted from the compensation that the employee receives due to leave sharing.

Chapter 4 – Leave

Voluntary payroll deductions may continue while an employee is receiving leave share donations provided that the compensation that the employee receives is sufficient to cover the deductions. If the compensation received through leave share donations is insufficient to cover such voluntary deductions, participation in the programs will be terminated unless the employee makes arrangements for timely payments.

3. Group Life Insurance

If local funds are available the LDSS may permit employees receiving leave share donations to continue to be covered under the LDSS's group life insurance policy for up to two years.

E. Leave Bank Requirements

Each LDSS that provides a leave sharing program has discretion to structure the program based on its needs. However, annual leave is the only leave that may be donated to the leave bank.

1. Annual Leave Donations

Annual leave may be donated in the following ways:

- a. Annual leave that will be lost if not used by the end of the year;
- b. Annual leave that is within the maximum accrual amount;
- c. A fixed amount per donation or per year per employee; and/or
- d. No limitations on amount or timing of donated leave.

2. Establishing a Leave Bank

There are three types of leave banks that may be established:

- a. A non-designated leave bank which permits donating to a pool to be used by any eligible employee;
- b. Donation to a designated employee of the LDSS; or
- c. A combination of the above.

Chapter 4 – Leave

3. Returning Leave Donation

If the leave bank established is one in which leave is designated for an employee and the amount of donated leave is in excess of the amount needed to cover the employee's absence, the excess leave will be returned to the donor(s) in:
(1) reverse order of the receipt of donations; or (2) a pro-rata amount per donor.

4. Reclaiming Leave

Leave given by a donor may be reclaimed by the donor only if the donation has not yet been processed.

F. Penalties for Abuse

If abuse of this policy is found, the employee will be required to repay the cost of all donated leave at the salary rate in effect at the time the employee was placed on leave without pay. Additionally, the employee may be disciplined in accordance with provisions of the VDSS Standards of Conduct.

Chapter 4 – Leave

SECTION XII Virginia Workers' Compensation

Purpose

The purpose of this policy is to advise employees of benefits that may be available to them under the Virginia Workers' Compensation Act (WCA). Employees may be eligible for benefits under the Act if they sustain a compensable injury by accident, suffer from an occupational disease or a compensable ordinary disease of life.

Scope

This policy applies to all employees.

A. Definitions

1. Injury

A physical injury by accident both arising out of and in the course of employment.

2. Occupational Disease

A disease arising out of and in the course of employment, but, unless otherwise provided by the WCA. It is not an ordinary disease of life to which the general public is exposed outside of employment.

3. Permanent Partial Disability

A permanent loss to the body that was caused by an injury or occupational disease that does not result in the employee's total incapacity. An example of a permanent partial disability is the loss of, or partial loss of, a finger.

4. Pre-Injury Average Weekly Wage

The injured employee's actual wages during the 52 week period preceding the date of injury, divided by 52.

5. Workers' Compensation Leave

A type of leave from employment which results from an employee's incapacity to work and which has been determined to have resulted from an injury or

Chapter 4 – Leave

occupational disease such that the employee is entitled to benefits required by the WCA.

B. Benefits to Which an Employee May be Entitled

Once an employee has a compensable injury or illness, the following benefits may be available:

1. Wage Replacement

An employee who suffers an injury or occupational disease may be entitled to wage loss benefits, as set forth under the WCA, if the employee is temporarily unable to return to regular employment and suffers a wage loss as a result of that disability.

2. Medical Benefits

Under the WCA, an employee may be entitled to lifetime medical benefits for treatment that is reasonable, necessary and causally related to the work related injury or disease as set forth and authorized under the WCA.

3. Permanent Partial Disability Benefits

An employee may be entitled to compensation for permanent loss of use of a “scheduled” body part as set forth under the WCA.

C. Responsibilities of an Injured Employee

1. Once an injury has occurred, the employee must notify the employer immediately. The LDSS, not the employee, is to complete the accident report.
2. The employee must choose a treating physician from a panel of at least three physicians which will be provided by the LDSS.
3. If the employee is released to “light duty work,” he or she must accept “light duty work” if offered by the LDSS.
4. If “light duty” employment is not offered by the LDSS, the employee must seek his own employment within his light duty restrictions.

Chapter 5 – Operations of the LDSS

Chapter 5 Table of Contents

<u>Section</u>	<u>Page</u>
I. Hours of Work.....	94
A. Definitions	94
B. Work Schedules	95
C. Employee Responsibilities	96
II. Inclement Weather	98
A. Closing the LDSS	98
B. Compensation for Closings.....	98
III. Use of Internet and Communications Systems.....	102
A. Definitions	102
B. General Provisions	102
C. User Responsibilities	104
D. User Consent	105
E. Violations	105
IV. Workplace Safety.....	106
A. Employer Responsibilities.....	106
B. Employee Responsibilities	106
C. Reporting and Recordkeeping Requirements	107
D. Right to Know about Safety Hazards	107
E. Inspections	107
F. Protection from Discrimination and Retaliation	108

Chapter 5 – Operations of the LDSS

[This page intentionally left blank.]

Chapter 5 – Operations of the LDSS

Section I Hours of Work

Purpose

To provide procedures for convenient and consistent hours for the transaction of LDSS business.

Scope

This policy applies to all employees.

A. Definitions

1. Office Hours

The establishment of office hours, the hours that the LDSS is open to serve the public is a responsibility of the local board. Office hours generally coincide with the hours of operation for the Virginia Department of Social Services. Each LDSS may set its hours of operation to coincide with those of the locality.

2. Standard Workweek

The Fair Labor Standards Act (FLSA) defines a workweek as a fixed and regularly recurring period of 168 hours, or seven consecutive 24-hour periods. The workweek does not have to coincide with the calendar week, but instead it may begin on any day of the week and at any hour of the day. The workweek is the basis on which determinations of employee coverage, the application of most exemptions, and compliance with the wage payment requirements of the FLSA are made. Once the beginning time of an employee's workweek is established, it remains fixed regardless of the hours the employee is scheduled to work.

The standard workweek for full-time positions is established by the local board; generally it consists of a five-day schedule in a seven calendar-day period but flexible scheduling may be permitted by the local board.

3. Regular Work Schedule

The regular work schedules may be uniform for every employee and coincide with the local department's office hours, or may be established differently for each employee to meet the needs of the agency.

Chapter 5 – Operations of the LDSS

B. Work Schedules

1. LDSS Director to Determine

The local director shall set and adjust the work schedules for employees in consideration primarily of the needs of the LDSS clients and the general public. Schedules may change as operational needs change.

2. Adjustments to Regular Schedules

- a. In emergency situations, an employee's schedule may be adjusted temporarily if such adjustment is approved by the supervisor or local director.
- b. With the exception of providing accommodations for a disabled employee or for Family and Medical Leave purposes, an employee's regular work schedule may not be adjusted to meet the employee's personal needs except on an occasional basis.

3. Lunch Periods and Breaks

The local director is responsible for scheduling lunch periods and other breaks as described below, with the least disruption possible to the LDSS operations.

a. Mandatory Lunch Period

- (1) Employees who work at least six consecutive hours shall be afforded a lunch period (meal break) of at least 30 minutes and not more than 60 minutes. An employee cannot work through the lunch period without the permission of the supervisor.
- (2) The lunch period is not counted in the total required hours of work per day.
- (3) On the occasion when the designated lunch break is part of the work schedule (e.g., to provide staffing for client services), the lunch period will count as hours worked.

b. Discretionary Breaks

- (1) The local director may grant employees who work a full work day a rest break twice a day.
- (2) Unless the rest break is longer than 15~~20~~ minutes, the rest break shall be included on the timesheets as hours worked.

c. Impermissible Use of Lunch Period and/or Breaks

- (1) The lunch period and the break(s) must be used separately and may not be used to extend the lunch period and/or breaks unless permission is obtained from a supervisor in advance.

Chapter 5 – Operations of the LDSS

- (2) Neither the lunch period nor the break(s) may normally be used to “make up” for an employee’s late arrival or early departure, or to cover time off for other purposes. Late arrivals and early departures are not permitted without permission of the supervisor.

4. Alternate Work Schedules

- a. A LDSS may implement work schedules that differ from the standard workweek (typically a five-day, 40-hour per week schedule), if such schedules are deemed to promote efficient LDSS operations.
- b. Work schedules may be adjusted during the work period by the supervisor, without the consent of the employee, to avoid overtime hours.
- c. Alternative work schedules may include, but are not limited to, flexible work schedules (e.g., flexible start and end times with core hours), compressed work schedules (e.g., four 10-hour days), rotational shifts, and job-sharing. Alternative work schedules may be terminated by the supervisor at any time.
- d. During emergency situations, the LDSS may schedule employees to work outside their normal work hours and employees will be required to work the assigned hours.

5. Overtime Hours

- a. A non-exempt employee may work overtime hours only as authorized by the supervisor or the local director.
- b. Employees are expected to work overtime hours as required.
- c. An employee taking approved annual or sick leave during the workweek may also be asked to work additional hours during the same work week. With the approval of the employee, the LDSS may substitute the additional hours worked for hours of leave.

C. Employee Responsibilities

1. Report as Scheduled

Employees are required to adhere to their work schedules by reporting to work at the specified starting time, departing at the specified ending time, and taking lunch periods and breaks as assigned.

2. Notice to Supervisor

An employee is expected to notify the supervisor as soon as possible if they are unable to adhere to the work schedules.

Chapter 5 – Operations of the LDSS

[This page intentionally left blank.]

Chapter 5 – Operations of the LDSS

Section II Inclement Weather

Purpose

The purpose of this policy is to provide procedures for the occasions when the LDSS operations are closed due to inclement weather conditions or other emergencies such as utility failure, fire, and other forced evacuations.

Scope

This policy applies to all employees.

A. Closing the LDSS

1. Closing Decision

The decision to close the LDSS is to be made by the local board chairperson in conjunction with the local director.

2. Announcing Closing Decisions

The local director determines the means by which employees are to be notified that the LDSS is closed. All employees should be made aware of the method used to communicate the closing.

3. Notification of Closing

The local director will inform their assigned Regional Director of LDSS opening delays or closures. The Regional Director will communicate the information to the Home Office.

B. Compensation for Closings

1. Essential Employees

- a. The local board and local director determine which classes of employees are essential and would therefore be required to work when the LDSS is closed. A list of such employees will be maintained by the local director and designation as an essential or non-essential employee will be made on each employee's Employee Performance Plan and Evaluation (EPPE) form. In addition, when a special need arises, the local director may designate other employees as essential.

Chapter 5 – Operations of the LDSS

- b. Essential employees who work when the LDSS has been closed will be compensated as follows:
- (1) Part-time hourly employees will receive the regular rate of pay for hours worked; or
 - (2) Salaried employees will receive salary for that day and also may be given special duty leave for the hours worked.
 - (3) Essential employees who are non-exempt under the Fair Labor Standards Act will have the hours worked during a LDSS closing count as hours worked for purposes of overtime compensation.
 - (4) When an essential employee does not report to work during a LDSS closing as required:
 - (a) The hours will be charged to leave without pay; and
 - (b) The failure to report without good and sufficient cause may be grounds for disciplinary action.

2. Non-Essential Salaried Employees

a. Receipt of Salary for LDSS Closing

- (1) To receive salary for a day that the LDSS is closed, the non-essential employee must have been on paid status (at work or on pre-approved paid leave) on the scheduled work days immediately before and immediately after the LDSS closing.
- (2) If the LDSS is closed for part of a day, an employee has to report to work for the hours that the LDSS is open in order to receive salary for the day. If the employee does not report to work on that day, the hours that the LDSS was open must be charged to annual leave or leave without pay at the discretion of the LDSS. If the employee does not have good and sufficient cause for not working the partial day, the employee may be subject to discipline for failing to report to work when scheduled.

b. Arriving Late to Work

When road conditions and transportation difficulties cause an essential employee to arrive late to work and the local director determines that there was justification for the later arrival, the time lost will not be charged to the employee's leave balances or to leave without pay.

c. Non-Essential Employee Reporting to Work

When a non-essential employee reports to work during inclement weather or other emergency closing, the employee will only receive salary for that day and is not eligible to receive special duty leave.

Chapter 5 – Operations of the LDSS

3. LDSS Closing on Scheduled Rest Day

An employee whose scheduled rest day falls on a day when the LDSS is closed for inclement weather will not be credited with compensatory leave.

Chapter 5 – Operations of the LDSS

[This page intentionally left blank.]

Chapter 5 – Operations of the LDSS

Section III Use of Internet and Communications System

Purpose

To establish a policy for the use of the Internet and the LDSS communications systems and equipment.

Coverage

This policy applies to all employees.

A. Definitions

1. Computer Network

Two or more computers or servers that share information, typically connected by cable, data line, or wireless link.

2. Communications System

A system and equipment used as a means of sending and receiving messages electronically through a computer system or the Internet, such as e-mail or voice mail, or digitally or wire such as telephones, cell phones, pagers, video recorders. As used in this policy, communications system includes communications equipment and devices, including new forms of electronic communication as developed.

3. Internet

An international network of independent computer systems including the World Wide Web.

B. General Provisions

1. Business Use

LDSS-provided computer systems that allow access to the Internet and other communications systems are the property of the LDSS and are provided to facilitate the effective and efficient conduct of LDSS business. Users are permitted access to the Internet and communications systems to assist in the performance of their jobs. Each LDSS may adopt its own policy setting forth with specificity the work-related purposes for which such equipment and access are provided.

Chapter 5 – Operations of the LDSS

2. Personal Use

- a. Personal use means use that is not job-related. In general, incidental and infrequent personal use of the LDSS Internet or communications systems may occur; however, personal use is prohibited when it is determined by the LDSS that such use:
 - (1) Interferes with the user's productivity or work performance, or with any other employee's productivity or work performance;
 - (2) Adversely affects the efficient operation of the computer or communications system;
 - (3) Violates any provision of this policy, the Virginia Department of Social Services Information Security Policy, or any other policy, regulation, or law.
 - (4) Incurs charges to the LDSS (whether or not the employee intended to reimburse the LDSS for such charges).
- b. Whenever the LDSS Internet or communications systems is used for personal use, the message must be stated in such a way as to be clear to the receiver that the communication is personal and is not a communication of the LDSS.
- c. Use of a personal Internet account on the communications system is deemed to be personal use.

3. No Expectation of Privacy

- a. An employee should not have any expectation of privacy in any message, file, image, or data created, sent, received, or stored on the communications system.
- b. The LDSS reserves the right to monitor any and all aspects of the computer systems including, but not limited to, internet sites, instant messaging, chat groups, or news groups; and e-mail and voice mail sent, received or stored without the LDSS employee's permission.
- c. Such monitoring may occur at any time, without notice, and without the employee's knowledge.

4. FOIA

Communicated messages stored on the LDSS communications systems are subject to the Freedom of Information Act (FOIA) and may be disclosed to the public.

5. Prohibited Activities

Certain activities are prohibited when using the Internet or electronic, digital or wire communications systems. These include, but are not limited to:

Chapter 5 – Operations of the LDSS

- a. Accessing, downloading, printing or storing information with sexually explicit content. Per Code of Virginia §2.2-2827, sexually explicit content is: (1) any description of, or (2) any picture, photograph, drawing, motion picture film, digital image or similar visual representation depicting sexual bestiality, a lewd exhibition of nudity as nudity is defined in § 18.2-390 of the *Code of Virginia*, sexual excitement, sexual conduct, or sadomasochistic abuse as defined in § 18.2-390 of the *Code of Virginia*, coprophilia, urophilia, or fetishism (except as otherwise required for the work of the LDSS and/or approved by the local director).
- b. Downloading or transmitting fraudulent, threatening, obscene, intimidating, defamatory, harassing, discriminatory, or otherwise unlawful messages or images;
- c. Installing or downloading computer software, programs, or executable files contrary to policy;
- d. Uploading or downloading copyrighted materials or proprietary information contrary to policy or law;
- e. Uploading or downloading access-restricted LDSS information contrary to policy;
- f. Sending e-mail using another's identity, an assumed name, or anonymously.

C. User Responsibilities

1. Professional Use of Communications Systems

- a. Employees who access the Internet or send e-mail containing a DSS or locality domain address, whether for personal or official purposes, are expected to do so in a responsible and professional manner.
- b. The distribution of electronic communications is difficult to control and routing mistakes can easily occur. Copies of electronic communications can be forwarded without the sender's knowledge or permission to unintended recipients. Therefore, electronic communications should be drafted and sent with at least the same level of care, professional judgment, and discretion as paper memoranda or documents.

2. Security

All employees are responsible for exercising appropriate care to protect the LDSS computer system against the introduction of viruses. When using the LDSS Internet access and/or communications systems an employee must:

- a. Use the Internet or electronic communications systems only in accordance with State and LDSS policy;
- b. Maintain the conditions of security (including safeguarding of passwords) under

Chapter 5 – Operations of the LDSS

which they are granted access to such systems;

- c. Check with the appropriate LDSS staff prior to downloading or accessing a file or document when the source of the file or other circumstances raises doubts about its safety or propriety.

3. Non-Authorized Use

The LDSS communications systems are not to be used by any person not affiliated with the LDSS. Passwords and user codes are not to be shared with anyone without permission of the local director.

D. User Consent

The communications systems are provided to an employee for LDSS use. In order to use such equipment and systems, an employee is required to sign the Acceptable Use Awareness Acknowledgement form confirming compliance with the policies and standards of the Information Security Program.

E. Violations

Violations of this policy will be addressed under the Standards of Conduct Policy. The appropriate level of disciplinary action will be determined on a case-by-case basis with sanctions up to and including termination depending on the severity of the offense.

Chapter 5 – Operations of the LDSS

Section IV Workplace Safety

Purpose

The purpose of this policy is to set forth procedures to help achieve a safe and healthy workplace.

Scope

This policy applies to all employees.

A. Employer Responsibilities

The Federal Occupation Safety and Health Act (OSHA), which is enforced by the Virginia Department of Labor and its Virginia Occupational Safety and Health (VOSH) Division, imposes on employers five primary obligations:

1. To comply with the substantive health and safety regulations adopted by VOSH which include general regulations and construction industry standards.
2. To provide in general, notwithstanding any specific regulation, a workplace that is “free from recognized hazards that are causing or are likely to cause death or serious physical harm.”
3. To keep records of all work related illnesses and injuries (unless exempted by federal or state law).
4. To allow inspections by VOSH (Code of Virginia 40.1-49.8).
5. To post the VOSH notice that informs employees of their rights and responsibilities under the VOSH Act.

B. Employee Responsibilities

Maintaining a safe work environment requires the continuous cooperation of every employee. Federal and state law make it a duty of employees to comply with all occupational safety and health rules and regulations that the LDSS implements. Therefore, it is expected that employees will at all times:

1. When in doubt about how to safely perform a job, ask a supervisor or manager.
2. Immediately report any suspected or potential unsafe conditions or suspected safety hazards that are on the job.
3. Immediately report all accidents and injuries.

Chapter 5 – Operations of the LDSS

4. Bring safety suggestions and health and safety related issues to the attention of the supervisor or manager.
5. Comply with the safety rules and regulations that are imposed by the LDSS.

C. Reporting and Recordkeeping Requirements

1. Federal law (Occupational Safety and Health Act) and state law (Virginia Occupational Safety and Health Act) require that employers keep records of all illnesses and accidents that occur during the workday. Under the provisions of 29CFR1904.3, Non-Mandatory Appendix A to Subpart B – Partially Exempt Industries, employers are not required to keep OSHA injury and illness records for any establishment classified in certain Standard Industrial Classification (SIC) codes, unless they are asked in writing to do so by OSHA, the Bureau of Labor Statistics (BLS), or a state agency operating under the authority of OSHA or BLS. Social Services agencies are classified as SIC Code 839 – Social Services, Not elsewhere classified and fall under this exemption.
2. Federal law and Virginia Code §40.1-51.1.D requires all employers, including those partially exempted by reason of company size or industry classification, to report any work related incident resulting in a fatality or a catastrophe (catastrophe is defined as the inpatient hospitalization of three or more persons) within 8 hours to the Virginia Department of Labor and Industry (DOLI). All reports are required to be made by telephone to or in person at the closest Department of Labor and Industry regional office. Contact information for the regional offices is located on the Department of Labor and Industry website (www.doli.virginia.gov).

D. Right to Know about Safety Hazards

Under OSHA and VOSHA you have a right to know about any health hazards which might be present on the job. Should you have any questions or concerns, contact your supervisor or manager for more information.

E. Inspections

1. The VOSH inspector may interview employees during an inspection; if an employee does not request management be present, management cannot insist on participating in the interview.
2. If a management employee is being interviewed, the local director and legal counsel may attend the interview.
3. If materials are taken, the LDSS may request copies of items seized or that samples be shared (however, VOSH is not required to provide the requested samples or copies).

Chapter 5 – Operations of the LDSS

F. **Protection from Discrimination and Retaliation**

Employees who report OSHA and VOSHA violations or who otherwise bring to the attention of the LDSS safety and health hazards are protected from discrimination and retaliation.

Chapter 6 – Performance Evaluation and Standards of Conduct

Chapter 6 Table of Contents

<u>Section</u>	<u>Page</u>
I. Performance Evaluation	106
A. Definitions	106
B. Performance Evaluation Cycle	110
C. Performance Improvement Plan.....	113
D. Performance Evaluations	114
E. Conducting the Performance Evaluation	116
II. Workplace Violence	122
A. Definitions	122
B. Prohibited Actions	122
C. Policy Violations	123
III. Outside Employment and Conflicts of Interest.....	125
A. Definitions	125
B. Summary of Prohibited Activities	127
C. Outside Employment	127
D. Gifts and Other Items of Value	128
E. Conflict of Interest.....	128
F. Ethical and Conflict of Interest Standards.....	129
IV. Standards of Conduct.....	132
A. Standards of Conduct.....	132
B. Disciplinary Offenses.....	133
C. Counseling	136
D. Procedures for Implementing Disciplinary Actions.....	136
E. Procedures Related to Suspension	140
F. Use of the Grievance Procedure	143
G. Non-Disciplinary Terminations.....	143
V. Alcohol and Drugs	145
A. Definitions	145
B. Employee Responsibilities	146
C. Drug and Alcohol Screening	146
D. Disciplinary Action.....	147

[Continued]

Chapter 6 – Performance Evaluation and Standards of Conduct

VI. Political Activities	150
A. Prohibited Activities.....	150
B. Permissible Activities	150
C. Penalties for Violating the Law.....	151
D. Further Information	151
E. Deviation to Local Policy	151

Chapter 6 – Performance Evaluation and Standards of Conduct

[This page has been intentionally left blank.]

Chapter 6 – Performance Evaluation and Standards of Conduct

Section I Performance Evaluation

Purpose

The purpose of this policy is to provide for the regular evaluation of all employees.

Scope

This policy applies to all employees, including local department directors.

A. Definitions

1. Acknowledgement of Outstanding Contribution

Used to document and recognize employee's outstanding contribution to the agency during the performance evaluation cycle.

2. Anniversary date

The annual day and month that corresponds to the effective date of an employee's hire, rehire, promotion, demotion, redefinition or other change in an employee's classification.

3. Annual performance evaluation

An annual assessment of an employee's performance of core responsibilities and performance measures.

4. Begin date

The date that an employee begins employment in a position.

5. Classification change

A change in an employee's position classification as a result of a promotion, demotion, redefinition, or other change in an employee's employment classification.

6. Conditional status period

A twelve (12) month period of evaluation to assess the performance of employees who have successfully completed a 12 month probationary period in a permanent position and have been promoted, demoted, redefined or otherwise had a change in classification. These employees retain grievance rights.

Chapter 6 – Performance Evaluation and Standards of Conduct

7. Core responsibilities

Broad sets of major duties or functions that are primary to the type of work performed by an employee. These job responsibilities normally remain relatively consistent during the performance cycle.

8. Counseling memorandum

A written summary of a discussion or meeting that a supervisor has had with an employee regarding misconduct, substandard performance, performance that needs improvement or failure to meet expectations.

9. Disciplinary action

Action taken by a supervisor in response to an employee's conduct in violation of the Standards of Conduct or policy, or to address substandard performance of work responsibilities.

10. Employee development plan

A component of the performance evaluation form that lists personal learning goals identified by the employee and/or the supervisor for the performance evaluation cycle. The plan identifies learning steps, goals that need to be taken, and resources needed, including training, coaching or other learning methods.

11. Essential functions

The job functions that must be performed in order to meet the business need for creating a position. For Americans with Disabilities Amendments Act (ADAA) purposes, these are the job responsibilities that an employee must be able to perform, with or without a reasonable accommodation. These are functions that normally cannot be transferred to another position without lowering the classification of the source position.

12. Evaluation date

The month and day each year when an employee's performance of the core responsibilities and performance measures is assessed.

13. Interim evaluation

An evaluation that is conducted six months into the performance evaluation cycle to document and assess an employee's progress toward meeting performance measures. It is strongly recommended that all employees have an interim evaluation.

Chapter 6 – Performance Evaluation and Standards of Conduct

14. Merit increase

An increase in compensation based on an employee's performance of job responsibilities at an overall performance rating of "meets expectations" or higher.

15. Notice of Improvement Needed form

Form used to document substandard performance or performance that does not meet the performance measures recorded on the performance evaluation form.

16. Performance coaching

Ongoing feedback and follow-up meetings provided to an employee to clarify expectations, acknowledge exceptional performance, or document and address substandard performance.

17. Performance evaluation cycle

The annual cycle of assessing employees' performance of job responsibilities and performance measures. The cycle consists of performance planning, ongoing feedback, and performance evaluation.

18. Performance evaluation

A means of assessing an employee's performance of job responsibilities and performance measures. This is usually an annual assessment comprised of a completed evaluation form and a conference between the employee and supervisor to review the written performance evaluation.

19. Performance improvement plan

A plan completed by an employee's immediate supervisor to address substandard performance or standards of conduct violations. This plan can be used at any time during the performance evaluation cycle, and must be used with any required re-evaluation plans developed after the annual performance evaluation.

20. Performance measures

Measures that are used to assess each core responsibility, special assignment or agency objective, which describe the complexity, accountability, and results of major responsibilities, assignments and objectives in a specific, measurable, attainable and relevant way. This is a component of the performance evaluation form.

21. Performance planning

Chapter 6 – Performance Evaluation and Standards of Conduct

The phase of the performance evaluation cycle during which the supervisor updates the employee work description, identifies the core responsibilities and performance measures, creates an employee development plan and conducts a performance planning meeting with the employee.

22. Overall Performance rating

The overall assessment of an employee's performance during the performance evaluation phase of the performance evaluation cycle. There are four options for ratings: "outstanding"; "exceeds expectations"; "meets expectations"; or, "needs improvement".

23. Probationary period

The twelve (12) month period during which an employee who is newly hired or re-hired is in an introductory, at-will period of employment that enables the employee and agency to assess the employee's suitability for the position. These employees do not have access to the grievance procedure during the probationary period.

24. Re-evaluation process

A process for the re-evaluation of an employee who has received an overall performance rating of "needs improvement" at the annual performance evaluation. The re-evaluation process should begin with the establishment of a performance improvement plan no more than ten (10) days after the annual performance evaluation meeting and should include a re-evaluation of the employee's performance during a specific timeframe, not to exceed 180 days. The performance improvement plan must be approved by the reviewer before it can be presented to the employee or become effective.

25. Reviewer

The immediate supervisor of an employee's supervisor. This is the person or local board designated to review an employee's work description, performance plan, performance rating, re-evaluation plan, and who responds to appeals of performance ratings. For local directors, this may be their local board or the VDSS Regional Director when the local director acts as the local board.

26. Special assignments

Additional job duties or responsibilities that are not core responsibilities or essential functions.

27. Substandard performance

Performance that does not meet the performance measures, the supervisor's expectations, the requirements of the standards of conduct or applicable policy.

Chapter 6 – Performance Evaluation and Standards of Conduct

28. Supervisor

The employee who oversees an employee's performance, develops work descriptions and performance plans, conducts performance evaluations and assessments, and determines performance ratings.

29. Termination

The involuntary separation of an employee from employment.

30. Work Profile

A brief job description, performance plan, core responsibilities, performance measures, employee development goals, and description of the physical demand requirements of a job.

B. Performance Evaluation Cycle

The performance evaluation cycle involves establishing performance planning, providing ongoing feedback that includes performance coaching, and an annual performance evaluation.

1. Performance Planning

The performance management cycle begins each year with the performance planning phase. During this phase, the performance plan is shared with the employee. This should be done at the beginning of the performance evaluation cycle.

a. Responsibilities of the Supervisor

The supervisor should use this time to communicate performance expectations to the employee.

i. Develop or modify each employee's performance plan on the performance evaluation form.

a) Identify the core and essential responsibilities of each employee's position. These may be prioritized based on the importance to the agency mission and the work unit.

b) Essential responsibilities will be designated within the core responsibilities.

c) Special assignments may be added to the performance plan.

Chapter 6 – Performance Evaluation and Standards of Conduct

- d) Identify the performance measures that correspond to each core responsibility, essential responsibility and/or special assignment. Measures should be SMART: specific, measurable, attainable, relevant and timely. They must be set at a level of performance that is clear to the supervisor, reviewer and employee.
 - e) Create an employee development plan for each employee that includes a learning plan, learning goals, and needed resources. This may be accomplished with input from the employee.
- ii. Have the reviewer approve and sign the performance plans.
 - iii. Review the performance plan with each employee.
 - iv. Have each employee sign the performance plan and provide each employee with a copy before the signed original is placed in the employee personnel file.
- b. Responsibilities of the Employee

The employee has a role in the performance planning phase that consists of the following:

- i. completely understanding the core responsibilities, special assignments, learning goals, and the employee development plan;
 - ii. asking clarifying questions as needed; and,
 - iii. requesting resources needed in order to be successful.
- c. Employee Performance Plan and Evaluation Form

The performance plan for local departments is documented in the LDSS Employee Performance Plan and Evaluation (EPPE) form. This form incorporates the components of the former work profile form.

2. Responsibilities related to the Local Director

The locality Board of Supervisors/City Council or local board of social services structure determines who completes the performance plan and the performance evaluation for the local director.

- a. If the locality has appointed an administrative board, the local board chair must prepare the performance plan and complete the performance evaluation.
- b. If the locality has appointed an advisory board, the administrative entity must prepare the performance plan and complete the performance evaluation.

Chapter 6 – Performance Evaluation and Standards of Conduct

- c. If the locality has appointed an advisory board and the local director is the administrative entity (when the local director is acting as the local board), the locality Board of Supervisors/City Council or designee must determine who will prepare the performance plan and complete the performance evaluation.
- d. Performance plans and evaluations for local directors should be completed in collaboration with VDSS Regional Directors.

3. Performance Coaching

a. General Principles

Supervisors should work with employees and provide coaching throughout the performance evaluation cycle to facilitate employee success and address minor, first-time or substandard performance issues.

b. Formal and informal Feedback

- i. Performance coaching provides formal and informal feedback for minor or first instances of substandard performance.
- ii. Formal feedback may be utilized to document substandard performance through counseling memorandum, interim evaluations, or the issuance of a written notice or notice of improvement needed at any time during the performance evaluation cycle.
 - a) All such notices issued must be approved and signed by the reviewer.
 - b) Employees must receive copies of formal feedback documentation.
 - c) Original documentation of formal feedback, including interim evaluations and/or notices of improvement needed, must be retained in the supervisor's confidential files for use during the annual performance evaluation.
- iii. When providing coaching to address an employee's performance, supervisors should:
 - a) observe the employee's work to inform coaching so it is relevant feedback; and,
 - b) review the employee's work products and results.
- iv. For employee performance that meets or exceeds expectations, take time to understand performance that is working and the reason for the employee's success.

Chapter 6 – Performance Evaluation and Standards of Conduct

- v. For employee's who are not meeting expectations or performance measures during the annual performance evaluation cycle:
 - a) focus attention on any specific aspect of the employee's performance that is not meeting the performance measures or expectations;
 - b) schedule a meeting to discuss substandard performance;
 - c) advise the employee ahead of time regarding the purpose of the meeting;
 - d) discuss alternative solutions for bringing performance up to expectations and for meeting performance measures;
 - e) schedule follow-up meetings to measure progress toward agreed upon solutions to improve performance;
 - f) seek solutions from the employee;
 - g) recognize the employee's successes and improvements;
 - h) communicate consequences for failure to improve performance;
 - i) document key elements of each coaching session/meeting.
- vi. VDSS Regional directors should provide performance coaching for the local department directors in their region, as needed.
- vii. Employees may have a role in the ongoing feedback about their performance by:
 - a) being receptive to feedback;
 - b) documenting their own performance and accomplishments;
 - c) providing feedback about their own performance to their supervisor;
 - d) offering solutions; and,
 - e) requesting resources needed to be successful.

C. Performance Improvement Plan

1. Substandard Performance

Chapter 6 – Performance Evaluation and Standards of Conduct

Significant, sustained or repetitive substandard performance that occurs during or at the end of the performance evaluation cycle, in violation of the Standards of Conduct, or results from a “needs improvement” overall performance rating on an interim or annual performance evaluation should be addressed through a performance improvement plan.

2. A performance improvement plan should consist of the following:
 - a. a timeframe of 30 to 180 days to enable the employee to improve performance;
 - b. the performance improvement plan may be developed by the supervisor with the employee’s input, or the supervisor alone, if they cannot agree;
 - c. the performance improvement plan should be attached to a notice of improvement needed form, written notice form, or re-evaluation;
 - d. the employee must be given a copy of the notice of improvement needed form, written notice form, or re-evaluation and the performance improvement plan.
 - e. originals of the notice of improvement needed form, written notice form, or re-evaluation, and performance improvement plan, and any other documentation of substandard performance must be kept in a supervisor’s file until after the completion of the evaluation or re-evaluation at the end of the probationary period, conditional status period, or performance evaluation cycle.

D. Performance Evaluations

1. Interim Evaluations

- a. Newly hired or rehired employees must serve a twelve (12) month probationary period.
- b. Employees who have successfully completed a probationary period and who have been promoted, demoted, redefined or had a change in classification must serve a twelve (12) month conditional status period.
 - i. Such employees retain their grievance rights.
- c. All employees should have an interim evaluation, six (6) months into the performance evaluation cycle.

2. A “needs improvement” Overall Rating During the Interim Evaluation

- a. When a probationary or conditional status employee’s interim evaluation has an overall rating of “meets expectations” or above, the employee will attain regular or restricted status if the end of probationary or conditional status period evaluation is also an overall rating of “meets expectations” or above.

Chapter 6 – Performance Evaluation and Standards of Conduct

- b. An overall rating of “needs improvement” on a probationary or conditional status period interim evaluation:
 - i. will result in the development of a performance improvement plan, and
 - ii. an extension of probation or conditional status for up to six (6) additional months, or demotion (for conditional status employees only), or termination.
- c. Employees must be notified when they attain regular or restricted status.
- d. Regular or restricted status employees who receive an overall rating of “needs improvement” on the interim evaluation should be provided with a performance improvement plan.

3. End of Probationary or Conditional Status Period Evaluation

At the end of the probationary or conditional status period, a performance evaluation must be conducted in the eleventh month, but no later than two weeks before the end of the probationary or conditional status period unless good cause can be shown for a delay in conducting the evaluation.

- a. If substandard performance occurs and does not result in termination before the end of the probationary or conditional status period, the following options may be exercised for an overall performance rating of “needs improvement” at the end of probation or conditional status period evaluation:
 - i. the probationary or conditional status period may be extended for up to six (6) months with a performance improvement plan and re-evaluation;
 - ii. conditional status period employees may be demoted;
 - iii. the probationary or conditional status period employee may be subject to termination.

4. Annual Performance Evaluation Date

- a. An annual performance evaluation is required of all employees. For every employee there shall be established a performance evaluation date; this date shall be as follows:
 - i. For employees who have successfully concluded the probationary period, the date that the employee ended probationary status shall be the annual performance evaluation date.

Chapter 6 – Performance Evaluation and Standards of Conduct

- ii. For employees who have successfully completed the conditional status period after a change in classification status, the date that the employee's classification changed shall be the annual performance evaluation date;
 - iii. For all regular, restricted status or permanent employees, the anniversary or evaluation date shall be the annual performance evaluation date; or,
 - iv. For local departments that choose to evaluate all employees at the same time annually regardless of the anniversary date or evaluation date, all permanent employees and all employees who have successfully concluded the probationary or conditional status period, should be provided interim evaluations until all employees can be evaluated at the same time each year.
- b. The annual performance evaluation should be conducted at least one month prior to the annual performance evaluation date, unless extenuating circumstances result in a delay.

E. Conducting the Performance Evaluation

1. Performance Evaluation – Local Director

- a. Directors receiving an original appointment must serve a twelve month probationary period.
- b. During the probationary period, a probationary progress review must be conducted. The same performance management options listed above apply to an overall rating of "needs improvement" on the probationary progress review or the end of probationary period evaluation.
- c. Thereafter, directors must receive an annual performance evaluation.
- d. The annual performance evaluation shall be conducted subject to the same process as indicated for all other local department employees below.

2. Performance Evaluation – All Local Department Employees

During the performance evaluation phase of the performance evaluation cycle, employees' performance during the performance evaluation period are assessed against the performance measures and expectations set for their core responsibilities, essential functions and special assignments.

The following types of leave taken must not be used to reduce an employee's overall performance rating: overtime/compensatory, special duty leave, worker's compensation, military, or, Family and Medical Leave.

Chapter 6 – Performance Evaluation and Standards of Conduct

- a. Employees may be provided with the opportunity to conduct a self evaluation using the performance evaluation form.
- b. The supervisor may review the employee's self evaluation, if applicable, and then complete a performance evaluation on the employee.
 - i. The supervisor must provide a rating for each performance measure and provide an overall performance rating.
 - ii. Any rating other than "meets expectations" requires supervisor comments.
 - iii. An overall rating of "outstanding", "exceeds expectations", or, "needs improvement" must be supported by documentation of acknowledgment of outstanding contribution, counseling memoranda, written notices based on the standards of conduct, notice of improvement needed, or documentation from performance coaching.
- c. The supervisor provides the completed performance evaluation, with recommendations, to the reviewer for approval and signature.
 - i. The reviewer may make comments or change the recommendations of the supervisor.
 - ii. The performance evaluation should not be presented to the employee until the reviewer and supervisor agree on the recommendations and overall performance rating.
- d. The performance evaluation cannot be shared with the employee until it has been approved and signed by the reviewer.
- e. The supervisor must conduct an evaluation meeting with the employee to review the performance evaluation.
- f. The employee may provide comments, if desired, then sign and date the performance evaluation after the evaluation meeting.
 - i. If the employee refuses to sign the evaluation form, the supervisor should note on the form that the employee refused to sign it.
 - ii. The employee's refusal to sign does not negate or in any way impact the validity of the performance evaluation.
- g. The employee should be provided with a copy of the signed evaluation form.
- h. The performance evaluation becomes part of the employee's personnel file after the performance evaluation meeting has been conducted.

Chapter 6 – Performance Evaluation and Standards of Conduct

- i. The information in the performance evaluation should not be disclosed or available to anyone other than those authorized to access the employee's personnel file without the employee's written consent.
3. Re-evaluation Process for Overall Performance Ratings of "Needs Improvement"
 - a. The supervisor must develop a re-evaluation and performance improvement plan for permanent employees who receive a "needs improvement" overall performance evaluation rating.
 - i. the performance improvement plan must be developed within ten (10) workdays of the performance evaluation meeting in which the employee received the overall rating of "needs improvement", unless extenuating circumstances result in a delay;
 - ii. the performance improvement plan must establish performance measures for a timeframe not to exceed 180 days and be approved by the reviewer;
 - iii. if the core responsibilities and/or performance measures remain the same as the original performance plan, they must be copied into a new performance evaluation form labeled "re-evaluation";
 - iv. the supervisor should meet with the employee to discuss the recommendations for meeting the performance measures in the re-evaluation period;
 - v. a re-evaluation must be done regardless of whether the employee appeals the performance evaluation;
 - vi. the reviewer should approve and sign the re-evaluation before it is presented to the employee or the employee signs it;
 - vii. the re-evaluation process terminates if the employee transfers to or obtains another position;
 - viii. the employee's performance re-evaluation should be conducted two weeks before the re-evaluation period ends;
 - ix. if the re-evaluation results in an overall rating of "needs improvement", the employee may be demoted or terminated from employment;
 - x. at any time during the re-evaluation period, the employee may be subject to disciplinary action in the form of a written notice based on the Standards of Conduct or the issuance of additional notices of improvement needed.
 4. Appeal of the Performance Evaluation or Re-evaluation
-

Chapter 6 – Performance Evaluation and Standards of Conduct

An employee who does not agree with the performance evaluation completed by the supervisor, may appeal to the reviewer for another review as follows:

- a. within ten (10) workdays of the employee's performance evaluation meeting, the employee may provide a written appeal to the reviewer;
- b. the reviewer must discuss the appeal with the employee and the supervisor;
- c. the reviewer should provide a written response to the appeal within five (5) workdays of discussing the appeal;
- d. the reviewer's written response must indicate:
 - i. agreement with the performance evaluation as it is written;
 - ii. a decision to have the supervisor revise the performance evaluation comments or ratings;
 - iii. a decision that the reviewer will revise the performance evaluation comments or ratings; or,
 - iv. a decision that the reviewer will conduct a completely new performance evaluation.

5. Merit Increases

- a. Local departments must set the overall performance evaluation rating that makes an employee eligible for any merit increases that local department elects to award based on performance.
- b. Only employees who achieve the overall performance rating set by their local department may be eligible to receive a merit increase.
- c. Employees who receive an overall performance rating of "needs improvement" or who have active Standards of Conduct violations are not eligible for a merit increase in that same performance evaluation cycle.
- d. The length of leave taken may impact whether an employee qualifies for any merit increases during that performance evaluation cycle.

6. Deviation in Performance Evaluation Policy

In local jurisdictions where there is a performance evaluation policy that applies uniformly to all local government employees, the local department of social services

Chapter 6 – Performance Evaluation and Standards of Conduct

may deviate to that policy provided it is approved by VDSS HR as being in substantial conformity with this policy.

Chapter 6 – Performance Evaluation and Standards of Conduct

[This page has been intentionally left blank.]

Chapter 6 – Performance Evaluation and Standards of Conduct

Section II Workplace Violence

Purpose

The purpose of this policy is to address violence in the workplace.

Scope

This policy applies to all employees.

A. Definitions

1. Third Parties

Individuals who are not LDSS employees, such as relatives, acquaintances, clients or strangers.

2. Weapon

A weapon is any device or instrument or material, including firearms, pepper spray or mace that is designed or used to attack or defend against an opponent or adversary.

3. Workplace

Any location where an employee performs work-related activities. This includes, but is not limited to, the local department's buildings and the surrounding perimeters, including the parking lots, field locations, alternative work locations and travel to and from work assignments.

4. Workplace Violence

Any physical assault, threatening behavior or verbal abuse occurring in the workplace by employees or third parties. It includes, but is not limited to, beating, stabbing, suicide, shooting, rape, attempted suicide, acts of intimidation, stalking, and harassment of any nature. Oral and written statements, gestures, or expressions that communicate to a reasonable person a direct or indirect threat of physical harm or psychological harm are included in this definition.

B. Prohibited Actions

Workplace violence is prohibited. Actions that may constitute workplace violence include, but are not limited to:

Chapter 6 – Performance Evaluation and Standards of Conduct

1. Injuring another person physically;
2. Engaging in behavior that creates a reasonable fear of injury or psychological harm to another person;
3. Brandishing, or using a weapon while on the LDSS premises or engaged in LDSS business without legal cause or authority;
4. Threatening to injure an individual or to damage property;
5. Committing injurious acts to a person or to LDSS property;
6. Uncontrolled anger that manifests itself in some physical act; and,
7. Any act deemed to be “workplace violence.”

C. Policy Violations

Employees violating this policy are subject to disciplinary action up to and including termination.

Chapter 6 – Performance Evaluation and Standards of Conduct

[This page has been intentionally left blank.]

Chapter 6 – Performance Evaluation and Standards of Conduct

Section III Outside Employment and Conflicts of Interest

Purpose

The purpose of this policy is to address outside employment, to set forth standards for ethical conduct, and to provide guidelines on conflict of interest.

Scope

This policy applies to all employees.

A. Definitions

1. Anything of value

Any item gift, gratuity, service or other item valued above \$30.

2. Business interest

Means a business gain or advantage, or anything regarded by the beneficiary as a business gain or advantage, including a business benefit to any other person or entity in whose welfare he is interested.

3. Benefit

Means a gain, advantage, or anything regarded as a gain or advantage.

4. Conflict of interest

Any conduct prohibited under the *Code of Virginia* as a conflict of interest; also, any conduct or activity that places an employee's personal interest, gain or benefit above the business, interest or operations of the local department.

5. Gift

Means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" shall not include any offer of a ticket or other admission or pass unless the ticket, admission, or pass is used. "Gift" shall not include honorary degrees and presents from relatives. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece, or nephew; a person to whom the donee is engaged to be married; the donee's or his spouse's parent,

Chapter 6 – Performance Evaluation and Standards of Conduct

grandparent, grandchild, brother, or sister; or the donee's brother's or sister's spouse.

6. Gratuity

Means the same as gift.

7. Honorariums

Any monetary gift for an appearance, speech, or article written.

8. Items (s) of value

Any gift, gratuity or service valued at \$30 or more; same meaning as anything of value.

9. Nominal value

Any gift, gratuity, or service valued at \$30 or less.

10. Outside employment

Any compensated activity that an employee engages when not engaged in employment activity at or on behalf of the local department.

11. Personal interest

Means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$10,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$10,000 annually; (iv) ownership of real or personal property if the interest exceeds \$10,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of (i) or (iv) above.

12. Professional standards

Standards in this policy section that pertain to the conduct of local department employees in their work on behalf of the local department.

Chapter 6 – Performance Evaluation and Standards of Conduct

13. Remunerative activity

Any outside employment, contracting, operation or financing of a business, engagement in professional activities or other activity that an employee undertakes when not working at or on behalf of the local department.

14. Special consideration

Same meaning as a benefit.

15. Stipend

Any monetary amount provided to cover expenses.

16. Token gift

Any gift or item valued at less than \$30.

B. Summary of Prohibited Activities

1. An employee may not engage in a remunerative activity without prior approval by the Director. A remunerative activity does not include stock or bond ownership in publicly traded companies or other passive income from such companies.
2. Accepting anything of value for work performed on behalf of the LDSS or because of an association with the LDSS.
3. Engaging in a transaction or a contract that constitutes a conflict of interest under any of the following *Code of Virginia* sections, as amended: the State and Local Government Conflict of Interests Act, §§ 2.2-3100 *et. seq.*; the *Ethics in Public Contracting provisions of §2.2-4367 et. seq.*; the *Virginia Governmental Frauds Act, §18.2-498.1 et. seq.*; or, any local ordinance passed pursuant to §2.2-3104.2.
4. Engaging in activities that may compromise services delivered by the LDSS by violating professional standards.

C. Outside Employment

1. Prior to engaging in a remunerative activity, an employee must obtain approval of the Director as follows:
 - a. An employee must complete a written request to engage in outside employment and submit it to the Director.
 - b. The employee should be provided with a prompt response (normally within three workdays).

Chapter 6 – Performance Evaluation and Standards of Conduct

- c. Permission should not be withheld unless there are reasonable grounds to believe that the time and effort required to engage in such activity would interfere with the employee's duties for the LDSS, would constitute a conflict of interest under the Conflict of Interest Act, or would compromise the integrity of the duties performed by the LDSS (e.g., operation of or employment with a child care center or other entity regulated by the LDSS).
2. Approval to engage in remunerative activities may be withdrawn in the following circumstances:
 - a. When work performance and/or production declines.
 - b. When flexibility in scheduling local department work activities is compromised.
 - c. When the remunerative activities create a dual relationship with clients, customers, and/or entities with whom the LDSS serves (e.g., serving as a guardian ad litem for a child receiving services from the LDSS); or,
 - d. When a conflict of interest under any section of the Code of Virginia is made known.

D. Gifts and Other Items of Value

1. Items of value for work performed for the LDSS or received because of the employee's association with the LDSS must be declined or, in the case of honorariums and stipends, turned over to the LDSS.
2. Notwithstanding this rule, an employee may accept (1) free participation in an event or dinner to which he or she has been invited as a member of a group or organization or (2) may accept a meal or other event of value greater than \$30, provided approval of the Director has been given and such acceptance does not constitute a conflict of interest under any section of the *Code of Virginia*.
3. Although token gifts may be accepted, they should be declined in all circumstances when the intent of the giver is to obtain special consideration.

E. Conflict of Interest

1. Under the State and Local Government Conflict of Interests Act, §2.2- 3100 *et. seq.* of the *Code of Virginia*, an employee may not have a personal interest (in a transaction or contract of the LDSS. The personal interest can arise through the activities of the employee or a family member. Additional employment or other remunerative activity may fall within the prohibited activities. Engaging in a conflict of interest is a criminal offense. Every employee should be familiar with the Conflict of Interests Act. For protect from prosecution, an employee should seek an opinion from the local government attorney, Office of the Attorney General, or

Chapter 6 – Performance Evaluation and Standards of Conduct

Commonwealth Attorney prior to engaging in an activity that might constitute a conflict of interest.

Those involved in procurement activities should also be aware of the restrictions found in the Ethics in Public Contracting Act, § 2.2-4367 *et. seq.* of the *Code of Virginia*.

2. All local employees should be further aware of the provisions of the *Virginia Governmental Frauds Act, §18.2-498.1 et. seq.*, and, any local ordinance passed pursuant to §2.2-3104.2 of the *Code of Virginia* which limits the monetary value of any gifts to local employees and requires disclosure of receipt of any such gifts.

F. Ethical and Conflict of Interest Standards

1. General Ethical Standards

It is every employee's obligation to make sure that on the job conduct enhances the public's trust in the LDSS and its mission. Therefore, when engaged in work activities, every employee should:

- a. Avoid activities which conflict or may appear to conflict with the best interest of the LDSS and its clients. Activities such as having a personal involvement with a current or potential vendor, grantee, or recipient of services fall within this category. If the relationship is disclosed to the Director and it is deemed appropriate, the relationship can continue;
- b. Ensure that travel, entertainment, and related expenses are reasonable and incurred solely for the business of the LDSS and not for personal gain or benefit;
- c. Decline a gift, gratuity, favor, food, transportation, lodging or entertainment for performance of LDSS duties or offered to influence decisions made on behalf of the LDSS. Exceptions to this rule would be promotional items of nominal value. If uncertain as to the value of the gift in question or of the appearance of impropriety, clarification should be sought from the Director;
- d. Refrain from participating in or otherwise influencing the selection of staff, consultants, or vendors who are relatives or personal friends;
- e. Disallow personal beliefs and practices whether they be religious, life style, dietary, etc., from entering into a professional relationship with a client;
- f. Show respect for and be courteous to co-workers, clients, and the public;
- g. Disclose all potential conflicts of interest in any matter to the Director; and,
- h. Ensure that all information, which is confidential, privileged or nonpublic, is not disclosed to third parties.

Chapter 6 – Performance Evaluation and Standards of Conduct

This list is not exclusive and other actions may constitute a breach of these general ethical standards.

2. Professional Standards

A social worker or eligibility worker must always maintain the highest professional standards and shall:

- a. Maintain the best interest of the client as the primary professional obligation;
- b. Carry out professional duties and obligations with integrity and objectivity;
- c. Have and maintain competence in the provision of client services;
- d. Not exploit the relationship with a client for personal benefit, gain or gratification;
- e. Protect the confidentiality and privacy of all information acquired from the client or others regarding the client and the client's family unless:
 - i. The client authorizes in writing the release of specified information;
 - ii. The information is released under the authority of a statute or an order of a court of competent jurisdiction; or
 - iii. Is otherwise authorized by the *Code of Virginia*;
- f. Not allow another profession, occupation, affiliation, or calling to affect the professional relationship with the client; and,
- g. Develop and maintain the required skills and competence to perform the job.

This list is not exclusive and other actions may constitute a breach of these professional standards.

3. Disclosure of Conflicts

Any known or possible breaches of this policy, the Conflict of Interest Act, or other applicable sections of the *Code of Virginia* should be disclosed. The disclosure should be made to the Director as soon as possible. All reports of possible breaches will be treated confidentially to the fullest extent permitted by law. All reports will be investigated and, if needed, appropriate action taken. Any Retaliation against a person who suspects and in good faith reports suspected violations is a violation of this policy.

Chapter 6 – Performance Evaluation and Standards of Conduct

[This page has been intentionally left blank.]

Chapter 6 – Performance Evaluation and Standards of Conduct

Section IV Standards of Conduct

Purpose

The purpose of this policy is to establish standards of conduct, minimum expectations for work performance and workplace behavior, and disciplinary consequences for violations. . Accordingly, this policy sets forth (1) standards for employee conduct; (2) disciplinary offenses; and, (3) corrective actions that may be imposed.

Scope

This policy applies to all employees.

A. Standards of Conduct

The following standards are not all-inclusive but are intended to be illustrative of minimum expectations for acceptable work performance and workplace behavior.

1. Attendance

- a. An employee should report to work as scheduled.
- b. If an employee cannot report as scheduled, the employee should:
 - i. Arrange planned absences, including reporting to work late or leaving work early, in advance with supervisors.
 - ii. Report unexpected absences, including reporting to work late or having to leave early, to supervisors as promptly as possible.
- c. While at work, an employee should:
 - i. Perform assigned duties and responsibilities during work time.
 - ii. Adhere to scheduled break and lunch times.
 - iii. Avoid engaging in personal matters when not on a scheduled break or lunch time.

d. Overtime work:

An employee is expected to work overtime hours including weekends, holidays, evenings and emergency duty when directed by the supervisor or local Director.

Chapter 6 – Performance Evaluation and Standards of Conduct

A non-exempt employee (as defined by the Fair Labor Standards Act) should not work overtime hours unless expressly directed to do so by the supervisor or local Director.

2. Satisfactory Work Performance

- a. An employee is expected to meet established performance measures on a sustained basis.
- b. An employee is expected to abide by all LDSS policies and directives.
- c. An employee who does not understand a policy is expected to ask for guidance from the supervisor or local Director.

3. Report Circumstances that May Affect Satisfactory Work Performance

- a. An employee should report to the supervisor any conditions or circumstances that prevent or impede satisfactory work performance.
- b. An employee should advise the supervisor of unclear instructions or procedures that may affect satisfactory work performance.
- c. An employee must report to the supervisor the following:
 - i. Criminal convictions.
 - ii. Convictions of a moving vehicle offense (if the employee uses the LDSS vehicle or transports clients).
 - iii. Child or Adult Protective Services complaints.
 - iv. Hatch Act violations.

B. Disciplinary Offenses

The offenses set forth below are not all-inclusive but are intended as examples of unacceptable behavior for which specific disciplinary actions may be warranted. Accordingly, any offense that undermines the effectiveness of LDSS' operations may be considered unacceptable and treated in a manner consistent with the provisions of this section.

1. Grouped According to Severity

The offenses listed below are organized into three groups according to the severity of the behavior, with Group I being the least severe. Mitigating and aggravating circumstances may generally be considered in determining the appropriate level of discipline.

Chapter 6 – Performance Evaluation and Standards of Conduct

Conduct listed at one level may under certain circumstances be issued at a higher or lower level.

a. Group I

These offenses include facts and behaviors that are less severe and are such that the accumulation of four Group I written notices will normally result in termination:

- i. Unsatisfactory attendance or excessive tardiness.
- ii. Abuse of LDSS time, including unauthorized time away from the work station, use of LDSS time for personal business, leaving the work site unattended, or abuse of sick leave.
- iii. Use of obscene words or gestures.
- iv. An incidence of inadequate or unsatisfactory work performance.
- v. Disruptive behavior.
- vi. Conviction of a moving traffic violation while using an LDSS-owned vehicle or while transporting clients.
- vii. Sleeping on the job.

b. Group II

These offenses include acts and behavior that are more severe in nature and are such that an accumulation of two Group II written notices or offenses normally should warrant removal.

- i. Refusal to follow a supervisor's instructions, perform assigned work, or otherwise comply with workplace rules and policies.
- ii. Knowingly or with careless indifference violating a safety rule where there is not a threat of bodily harm.
- iii. Leaving the work site during work hours without permission.
- iv. Failure to report to work as scheduled without proper notice to the supervisor.
- v. Unauthorized use or misuse of LDSS property including computers or records.
- vi. Neglect of duties, indifference to critical time periods or other work demands.
- vii. Carelessness in recording and maintaining LDSS records.

Chapter 6 – Performance Evaluation and Standards of Conduct

- viii. Breach of client confidentiality or unauthorized disclosure of LDSS information.
- ix. Violation of the Alcohol and Other Drugs Policy.
- x. Violation of the Equal Employment Opportunity Policy.

c. Group III

These offenses include acts and behavior of such a serious nature that a first Group III written notice or offense normally warrants removal.

- i. Absence without proper authorization or a satisfactory reason.
- ii. Falsifying a public record, including, but not limited to, employment records, vouchers, reports, insurance claims, time records, leave records, or other LDSS documents.
- iii. Damaging or defacing LDSS records, LDSS property or property of other persons.
- iv. Theft or unauthorized removal of LDSS records, LDSS property, or the property of other persons.
- v. Gambling on LDSS property or during work hours.
- vi. Fighting and/or other acts of violence in the workplace or while engaged in LDSS business.
- vii. Knowingly or with careless indifference violating safety rules where there is a threat of physical harm.
- viii. Participating in any kind of work slowdown or similar concerted interference with LDSS operations.
- ix. Illegal possession or use of firearms, dangerous weapons, or any possession of explosives in the workplace.
- x. Threatening, coercing or physically assaulting persons associated with the LDSS (including, but not limited to employees, supervisors, clients, visitors, and contractors).
- xi. Criminal conviction for conduct occurring on or off the job that clearly is related to job performance or are of such a nature that to maintain the employee in the position could constitute negligence in regard to LDSS' duties to the public or to other LDSS employees.

Chapter 6 – Performance Evaluation and Standards of Conduct

- xii. Failure of an employee whose job requires carrying a firearm or who has authorization to carry a firearm to report conviction for the “misdemeanor crime of domestic violence”.
- xiii. Appropriating or otherwise using LDSS information for personal advantage or gain.
- xiv. Refusal to work overtime hours, holidays, weekends, evenings, or in emergency situations.

C. Counseling

1. While it is hoped that most performance and behavior problems can be resolved through informal counseling, counseling is not a prerequisite to formal disciplinary action.
2. Counseling should consist of a private discussion between the employee and the supervisor regarding the nature and significance of the actions constituting the offense and the desired course of action to improve the employee’s performance and/or behavior.
3. Documentation of Counseling
 - a. Counseling may be informal and given without written documentation.
 - b. Counseling may be documented by a letter or memorandum separate from the Written Notice form.
 - c. Documentation regarding counseling should be retained in the supervisor’s files, not in the employee personnel file, except as used to support subsequent formal disciplinary action.
 - d. Counseling memoranda are not grievable.

D. Procedures for Implementing Disciplinary Actions

1. Disciplinary Action

Disciplinary action is taken through the issuance of a Written Notice and may also include a:

- a. Suspension;
- b. Transfer or demotion along with a disciplinary salary action; or
- c. Termination.

Chapter 6 – Performance Evaluation and Standards of Conduct

A Written Notice form should state the offense and the disciplinary action and the employee's **r o r e e M e**

Chapter 6 – Performance Evaluation and Standards of Conduct

d. Disciplinary Suspension

If the LDSS determines that a disciplinary suspension is warranted, the period of suspension that the employee has served pending the investigation or court action shall count towards the period of disciplinary suspension.

e. Suspension Pending LDSS Investigation

i. Length of Suspension

- a) The period of suspension pending an LDSS investigation shall be limited to ten (10) workdays.
- b) If the LDSS does not make a decision regarding disciplinary action within ten workdays, the employee shall be permitted to return to work (at the same or a different position with no loss in pay) pending completion of the LDSS investigation or placed on administrative leave.

ii. The Investigation Concludes No Employee Misconduct

If the LDSS investigation clears the employee of any misconduct, the LDSS must reinstate the employee with back pay for the period of suspension or charge the time on suspension to administrative leave with pay.

f. Suspension Pending Investigation by Law Enforcement Agencies or Court Action.

i. Length of Suspension

The ten (10) day limit on the period of suspension that applies to suspensions pending LDSS investigations shall not apply if:

- a) The court action or investigation by law enforcement agencies involves alleged criminal misconduct on the part of the employee; and
- b) The misconduct under investigation is of such a nature that to retain the employee could constitute negligence in regard to the LDSS's duties to the public and other LDSS employees.

ii. Upon the conclusion of an investigation by law enforcement agencies or of a court action, the LDSS has the discretion to:

- a) Impose disciplinary action, including termination; or
- b) Reinstate the employee with full back pay if the employee is cleared of all misconduct.

g. Disciplinary Suspensions of Exempt Employees

Chapter 6 – Performance Evaluation and Standards of Conduct

- i. When necessary to impose a suspension for an exempt employee for an infraction of a minor safety rule, the suspension period must be in increments of full days.
- ii. Suspension of an exempt employee for an infraction of a safety rule of major significance may be applied for less than a full day. Safety rules of major significance are defined as rules intended to prevent serious danger to the workplace or to other employees.

3. Pay and Benefits During Suspension

The provisions regarding compensation and benefits set forth below apply to suspensions, whether initiated pending an investigation or court action, or imposed for disciplinary reasons.

- a. All suspensions are without pay, except that an employee suspended pending an investigation or court action may be allowed to use accrued annual leave to receive pay.
- b. The employee may also be placed on paid or unpaid administrative leave, at the discretion of the local Director.
- c. Performance Increases and Leave Accrual
 - i. An employee's eligibility for performance increases may be affected by the time on suspension.
 - ii. No annual or sick leave will be earned while on suspension.
 - iii. Suspensions exceeding 14 calendar days shall affect an employee's length of service for purposes of annual and sick leave accrual.
- d. Insurance
 - i. Health Insurance
 - a) A suspended employee's health insurance coverage continues until the end of the month in which the suspension began.
 - b) If the length of the period of suspension results in a termination of health plan coverage, the suspended employee is to be provided a COBRA Notice and a Continuation of Health Plan Coverage form and may elect to continue his or her group insurance coverage as well as that for covered dependents by paying the monthly insurance premiums (both the employee's and the LDSS' contribution) in advance each month.

Chapter 6 – Performance Evaluation and Standards of Conduct

c) Upon Reinstatement

- (i) If an employee is reinstated with back pay covering any portion of the suspension, the LDSS shall make appropriate refund(s) to the employee for any health plan premiums that the employee paid to continue employee coverage (or other premium payments that the LDSS provides as a benefit) during the suspension.
- (ii) If an LDSS reinstates a suspended employee without back pay, there shall be no reimbursement for any portion of health plan premiums that the employee paid to continue coverage.

F. Use of the Grievance Procedure

An eligible employee may challenge a disciplinary action through the grievance procedure.

G. Non-Disciplinary Terminations

An employee unable to meet the employment requirements for the position due to circumstances such as those listed below may be removed and will not have access to the grievance procedure:

1. Driver's license and driving record related job requirements:
 - a. When a driver's license is required for the job;
 - b. the loss of the driver's license;
 - c. a driving record that would disqualify an employee from coverage under the LDSS's insurance policies without a special exception being made; or
 - d. a driving record that would place the LDSS in a negligent situation if a client was transported by the employee.
2. Incarceration.
3. Loss of license or certification required for the job.
4. Conviction of one of the criminal offenses referred to as "barrier crimes" in § 63.2-1719 of the *Code of Virginia*, as amended.
5. Founded Child or Adult Protective Services complaint.

Chapter 6 – Performance Evaluation and Standards of Conduct

[This page has been intentionally left blank.]

Chapter 6 – Performance Evaluation and Standards of Conduct

Section V Alcohol and Drugs

Purpose

The purpose of this policy is to establish procedures that will maintain a work environment free from the adverse effects of alcohol and controlled substances.

Scope

This policy applies to all employees.

A. Definitions

1. Alcohol

Any product defined as such in the Alcohol Beverage Control Act, § 4.1-100 of the *Code of Virginia*, as amended.

2. Conviction

A finding of guilty (including a plea of guilty or *nolo contendere*), or imposition of sentence, or both, by any judicial body charged with the responsibility of determining violations of the federal or state criminal drug laws, alcohol beverage control laws, or laws that govern driving while intoxicated.

3. Criminal Drug Law/Statute

Any criminal law governing the manufacture, distribution, dispensation, use, or possession of any controlled drug.

4. Controlled Drug/Substance

Any substance defined as such in the Drug Control Act, Chapter 34, Title 54.1 of the *Code of Virginia*, as amended, and/or Schedule I through V of the Controlled Substance Act (21 U.S.C. § 801) and whose manufacture, distribution, dispensation, use or possession is controlled by law.

5. Reasonable suspicion

Belief that an employee, vendor, contractor or client is under the influence of a controlled substance based on observed behavior.

Chapter 6 – Performance Evaluation and Standards of Conduct

B. Employee Responsibilities

1. No employee shall unlawfully manufacture, dispense, possess, use, or distribute any controlled substance, prescribed medication, or alcohol while at work.
2. No employee shall dispense, possess, use, or distribute any controlled substance, or alcohol while at work.
3. No employee shall consume alcoholic beverages immediately before work, during work hours, or while at work during breaks or lunches.
4. No employee shall be impaired by alcoholic beverages or controlled substances during work hours.
5. No employee shall represent the LDSS in an official capacity while impaired by alcohol or controlled substances.
6. If an employee is using prescription or non-prescription medication that may impair performance of duties, the employee shall report the nature of the impairment to his or her supervisor and not use equipment, vehicles or machines without permission.
7. An employee who has reason to believe that the performance of another employee is impaired by alcohol, controlled substances, and/or medication shall immediately notify the supervisor.

C. Drug and Alcohol Screening

1. Reasonable Suspicion Testing

The LDSS reserves the right to test all employees, regardless of position, for the presence of controlled substances and/or alcohol under the following situations:

- a. Upon reasonable suspicion that an employee is using a controlled substance and/or alcohol or is under the influence of a controlled substance and/or alcohol.
- b. Upon returning to work:
 - i. After a serious on-duty or off-duty accident that involved the use of alcohol and/or a controlled substance; or
 - ii. After the employee has previously tested positive for controlled substances or alcohol use while on duty.

2. Random Testing

The LDSS reserves the right to test all employees and applicants in safety sensitive positions for the presence of controlled substances and/or alcohol under the following situations:

Chapter 6 – Performance Evaluation and Standards of Conduct

- c. Fundraising for political candidates or parties including making financial contributions and soliciting and collecting political contributions (provided such contributions are given voluntarily).
2. An employee may hold a partisan office if appointed to a vacancy but cannot subsequently campaign for that office.
3. An employee may serve as an election official at the polls and may serve as a poll watcher, checker, or challenger for a political party or candidate in a partisan election.

C. Penalties for Violating the Law

If the federal Merit System Protection Board finds that a violation of this policy warrants dismissal from employment, the LDSS is required to terminate the employee. Notwithstanding what action might be taken by the federal government, the LDSS may discipline the employee for violating this policy and such discipline could result in termination.

D. Further Information

1. The full text of the Hatch Act regulations are found in Title 5 of the Code of Federal Regulations part 151 (§§ 1501-1508).
2. An employee can seek an advisory opinion from the Office of Special Counsel at this address: *HATCHACT@osc.gov*.

E. Deviation to Locality Policy

An LDSS may use this policy or deviate to the policy of its locality if VDSS HR determines that such locality policy is in substantial compliance to this policy.

Chapter 7 – Discipline and Termination of Employment

Chapter 7 Table of Contents

<u>Section</u>	<u>Page</u>
I. Layoff	135
A. Definitions	135
B. Layoff Procedures.....	137
II. Grievance Procedure	140
A. Access to Procedure.....	140
B. Grievability	141
C. Conciliation or Mediation.....	142
D. Management Steps.....	143
E. Administrative Hearing	146
F. Compliance.....	149
III. Termination / Separation	152
A. Definitions.....	152
B. Types of Termination/Separation.....	153
C. Benefits upon Termination / Separation.....	154
D. Recording Date of Termination / Separation and Accrued Leave.....	154
IV. Extended Health Plan Coverage	156
A. Definitions	156
B. Qualifying Events.....	157
C. Additional Information on Extended Coverage.....	158
D. Notice by Employee	158
E. Notice of Qualifying Event.....	158
F. Continued Plan Participation	158
G. Premium Payments	160
H. Coverage Ends	160
I. Other Provisions	161
J. HIPAA Benefits	161

Chapter 7 – Discipline and Termination of Employment

[This page has been intentionally left blank.]

Chapter 7 – Discipline and Termination of Employment

Section I Layoff

Purpose

The purpose of this policy is to address a reduction or reorganization in workforce.

Scope

This policy applies to all employees.

A. Definitions

1. Conditional status period

A twelve (12) month period of evaluation to assess the performance of employees who have successfully completed a 12- month probationary period in a permanent position and have been promoted, demoted, redefined or otherwise had a change in classification. These employees retain grievance rights.

2. Demotion in lieu of layoff

When an employee is moved to a position in a lower band or a lower tier in the same band within the LDSS due to a reduction in force.

3. Emergency employee

Person employed with the understanding that the employment is time-limited to fill an immediate need of the LDSS. Emergency employees may work no more than the full-time-equivalent of 180 work days (consecutive or non-consecutive) in a twelve-month period. An emergency employee does not serve a 12-month probationary period and does not have access to the grievance procedure.

4. Former position

Position held by the employee just prior to layoff.

5. Layoff unit

A group of employees designated for application of layoff that may be defined by various combinations of organizational structure, job classification, program area, and status of position funding.

6. Minimally qualified

Chapter 7 – Discipline and Termination of Employment

Possession of the necessary knowledge, skills, and abilities (KSAs) and other bona fide job requirements such that the employee can successfully perform the job duties of the position within six months.

7. Placement option

Position available as an alternative to layoff.

8. Probationary employee

A person newly hired or rehired by the LDSS who is serving a twelve-month probationary period. These employees do not have access to the grievance procedure.

9. Recall Rights

Within six months after being laid off, an employee may be placed in a position within the same classification as that held immediately prior to layoff, without competitive recruitment. These recall rights are only valid for the first six months after the layoff occurs. After the six month period, laid off employees may be considered for available positions through competitive recruitment and selection at their current LDSS.

10. Regular Employee

Salaried full-time or part-time employee who has successfully completed a 12-month probationary period, and who has access to the grievance procedure.

11. Restricted Employee

Person employed in a position with limited funding or duration and who cannot be employed in the position longer than the stated duration of the position. Restricted employees serve a 12-month probationary period. These employees do not gain access to the grievance procedure upon completion of the 12-month probationary period.

12. Seniority

One of the criteria used by LDSSs to determine the order in which employees will be impacted by position abolishment. Seniority is calculated based on total continuous LDSS service time computed from the last employment or re-employment with the LDSS implementing the layoff. Computation of service includes approved leaves with pay and without pay. Seniority applies to probationary and regular employees.

13. Temporary employee

Chapter 7 – Discipline and Termination of Employment

Person employed with the understanding that the employment is of limited duration, typically no longer than a twelve-month period. A temporary employee does not serve a 12-probationary period and does not have access to the grievance procedure.

14. Valid vacancy

A vacant, fully funded, full- or part-time, permanent or restricted position that has been designated by the LDSS Board to be filled through placement options or a competitive recruitment and selection process.

B. Layoff Procedure

The LDSS conducts the following process to implement a layoff or reorganization. Refer to the Layoff Matrix for further guidance.

1. Freezes hiring on valid vacancies.
2. Identifies layoff unit(s) to be affected and defines the unit(s) so as to identify the potentially affected positions.
3. Identifies valid vacancies that can be used as placement options.
4. Abolishes vacant positions in the defined layoff unit.
5. Designates for termination any emergency, temporary, or restricted employees in the defined layoff unit regardless of which type of position they occupy.
6. Determines which regular employee(s) will be designated for layoff by using the following factors in order of sequence to rank the employees who have been designated for layoff:
 - a. Review past performance documentation, active written notices, and any disciplinary history.
 - b. Seniority.
7. Provides employees with placement options once they have been identified. An employee must be minimally qualified, in order to be placed in a valid, vacant position. These placement options may result in a demotion, reduction to part-time status, and/or movement to restricted status. A position that would be a promotion for an individual is not a valid placement option.
8. Notifies affected employees of the layoff effective date and provides them with extended health plan coverage notices when it is determined that there are no placement options available for them. Employees should be provided with a minimum of two weeks' notice that they are or may be affected by layoff.

Chapter 7 – Discipline and Termination of Employment

9. Notifies laid off employees of recall rights Recall rights exist only for a six month period following layoff. The notice should provide laid off employees with instructions on how to exercise their recall rights.
10. Abolishes former positions of employees who have been placed, laid off, or otherwise terminated.
11. Offers recall to employees in the order of their seniority, within the scope of the employees' eligibility for recall.

Chapter 7 – Discipline and Termination of Employment

[This page has been intentionally left blank.]

Chapter 7 – Discipline and Termination of Employment

Section II Grievance Procedure

Purpose

In accordance with §§ 63.2-219 and 15.2-1507 of the *Code of Virginia*, an LDSS must provide its employees with access to a grievance procedure to seek redress from unfair application of policy, discriminatory or illegal employment practices, disciplinary actions, and/or retaliation.

Scope

LDSSs or local boards have the option to adopt a grievance procedure that is either (i) adopted by the locality in which the department or board is located, or in the case of a regional department or board, the grievance procedure adopted by one of its localities in the regional organization; or (ii) approved by the Board. The grievance procedure adopted by the LDSS or local board shall apply to employees, including local directors.

The grievance procedure in this section applies to those LDSSs or local boards that have elected to adopt the grievance procedure approved by the Board. Non-probationary, regular full- and part-time employees, including those employees serving a conditional status period, and local directors have access to this procedure.

A. Access to Procedure

1. Except as noted below, employees are provided access to the grievance procedure provided that the grievance is initiated within thirty (30) calendar days from the event or action which gave rise to the grievance. The LDSS Director, as provided in § 63.2-219 of the *Code of Virginia*, has access to this Grievance Procedure.
2. The following employees do not have access to the grievance procedure:
 - a. Probationary employees;
 - b. An employee electing to proceed pursuant to any other state procedure;
 - c. An employee who has voluntarily resigned;
 - d. An employee who has been hired for a term;
 - e. An employee who is exempted under §15.2-1507 of the *Code of Virginia*; and,
 - f. An employee who is in a restricted, seasonal, emergency, or temporary position.

Chapter 7 – Discipline and Termination of Employment

3. An employee who has been terminated shall not have access to the grievance procedure after the date of termination, except to grieve a removal resulting from formal discipline, unsatisfactory job performance, or an involuntary resignation. As with other grievances, a grievance initiated after termination/resignation must be initiated within thirty (30) calendar days of the dismissal date. Any grievance initiated by an employee prior to separation from the LDSS may, at the employee's option, continue through the grievance procedure following the date of separation.
4. If an employee is denied access to the grievance procedure, the decision may be appealed to the circuit court having jurisdiction in the locality in which the employee is or was employed for a hearing on whether the employee should have access.
5. An employee who utilizes the grievance procedure, or participates in the process, is protected from retaliation for such participation.

B. Grievability

1. Grievable Issues

A complaint or dispute by an employee relating to one of the following is grievable:

- a. Disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance.
- b. Unfair or misapplication of personnel policies, procedures, rules, and regulations.
- c. Discrimination on the basis of race, color, creed, religion, marital status, age, disability, national origin, sex, pregnancy, political affiliation, or any other federally prohibited basis.
- d. Acts of retaliation as a result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, waste, gross mismanagement or abuse.
- e. Employees who have been reinstated to employment within the previous six months as a result of a final determination of a grievance who are then affected by termination, layoff, demotion, suspension due to lack of work, reduction in work force, or job abolition may grieve the methods, means and personnel by which work activities are to be carried out.

Chapter 7 – Discipline and Termination of Employment

If there was a valid business reason for the action and the employee was notified of the reason in writing prior to the effective date of the present adverse action, the LDSS action shall be upheld.

2. Nongrievable Issues

The LDSS has the exclusive right to manage the affairs and operations of government. Accordingly, the following actions are nongrievable:

- a. Establishment and revision of wages or salaries, position classification or general benefits.
- b. Work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job content.
- c. Contents of ordinances, statutes or established personnel policies, procedures, rules and regulations.
- d. Failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly.
- e. Methods, means and personnel by which work activities are to be performed.
- f. Relief of employees from duties in emergencies.
- g. Hiring, promotion, transfer, assignment and retention of employees within the local government.

C. Conciliation or Mediation

Most employee concerns or complaints can be resolved informally through communication between the employee and supervisor. Conciliation affords an employee and supervisor the option to reach a resolution that is acceptable to both of them. Mediation affords an opportunity to seek a resolution through discussions facilitated by a third party. Accordingly, employees are encouraged to take their complaints to the immediate supervisor to seek a resolution. Mediation may be available as an alternative to pursuing a complaint through the grievance procedure. For an employee participating in mediation to retain the right to pursue a grievance, the employee must have an agreement reached with the LDSS allowing an extension of the time period to file a grievance. To avoid any misunderstanding, the agreement should be in writing.

Chapter 7 – Discipline and Termination of Employment

D. Management Steps

Employees may pursue grievable issues through the grievance procedure, and supervisors, when requested, are to provide employees with the necessary form and a copy of the grievance procedure.

1. General Provisions

a. Time Periods

The use of the grievance procedure requires that certain actions shall be taken within specified periods of time. When used, “work days” means the days that the LDSS is open for business; official office closings and weekends do not count as work days. Full days, on which the individual responsible for taking the required action is on authorized leave time, will not be counted as workdays. If for any reason an action cannot be completed within the time period provided, the employee or the LDSS may request an extension; if an extension is granted it should be put in writing to document the agreement.

b. The grievance procedure has three steps. The three grievance steps may not apply in all circumstances, however.

(1) Grievances initiated by the Director:

If the grievance is initiated by the Director, the first and second steps of the grievance procedure will be collapse into one step which starts with the local department of social services administrative Board (hereafter “LDSS Board”). After the written grievance of a Director is submitted to the LDSS Board, the LDSS Board provides a written response. If the Director is not satisfied with the written response, he or she may request the third step fact-finding meeting with the LDSS Board. If the Director is not satisfied with the response of the LDSS Board, the Director may appeal to the next management level for an administrative hearing. When a grievance is initiated by the Director, the Director’s responsibilities in this procedure shall be executed by the LDSS Board.

(2) Grievances involving discrimination or retaliation:

If the grievance involves discrimination or retaliation by the immediate supervisor, the employee may initiate the grievance with the next management level. If the grievance is initiated with the Director, the first and second steps of the procedure are collapsed and the informal and written initiations of the grievance are with the Director.

2. First Step

a. Informal or Oral Initiation of Grievance

Chapter 7 – Discipline and Termination of Employment

An employee who has a complaint is encouraged to discuss it directly with the immediate supervisor as early as possible. This is an oral, informal initiation of a grievance which can be addressed verbally. Time spent informally attempting to resolve the complaint does not extend the 30-day time limit to initiate a grievance. The verbal grievance should include the date, the facts in support of the complaint, and the relief requested.

- b. Upon request, supervisors must provide employees with the necessary form and a copy of the grievance procedure.

- c. **Formal/Written Initiation of Grievance**

- (1) An employee must initiate a formal or written grievance with the immediate supervisor within thirty (30) calendar days after the event or action which is the basis for the grievance.

The formal/written grievance must be initiated on the Department of Social Services – Local Agency Employee Grievance Form (hereafter referred to as Grievance Form). It may be hand-delivered, faxed, e-mailed, or mailed to the immediate supervisor.

- (2) The supervisor must meet with the employee within five (5) work days of receipt of a written grievance for the purpose of fact-finding. The only persons who may be present at this meeting are the employee, the supervisor, and appropriate witnesses. Witnesses may only be present while providing testimony.

- (3) The supervisor must provide a written response to the employee within five (5) work days following the meeting. That response is to be provided on the Grievance Form or an attachment to the Grievance Form.

3. Second Step

- a. If the supervisor's reply is unacceptable to the employee, and the employee desires to continue the grievance, the employee may advance the grievance to the Director by documenting the request on the original Grievance Form and sending it to the Director.
- b. The request must be received by the Director within five (5) work days following the date the employee received the written first step response.
- c. The Director shall meet with the employee within five (5) work days of receipt of the grievance record. The purpose of the meeting is fact-finding.

Chapter 7 – Discipline and Termination of Employment

- d. The Director must provide a written response to the employee within five (5) work days following the second-step meeting. That response is to be provided on the original Grievance Form or an attachment to the Grievance Form.
- e. Witnesses are permitted at the second step meeting, but only while providing testimony.

4. Third Step

- a. If the Director's reply is unacceptable to the employee and the employee desires to continue the grievance, the employee may advance the grievance to the LDSS Board by documenting the request on the original Grievance Form and sending it to the LDSS Board or personnel committee of the board, as applicable.
- b. The request must be received by the Board within five (5) work days following the date the employee received the written second step response.
- c. The LDSS Board, or the personnel committee of the LDSS Board, shall meet with the employee within five (5) work days of receipt of the grievance record. The purpose of the meeting is fact-finding.
- d. The persons that may be present at this meeting are the employee, the LDSS Board members, appropriate witnesses, and at the employee's option, a representative for the employee. Witnesses may be present at the meeting only while providing testimony.
- e. If the employee is represented by legal counsel, the LDSS likewise has the option of being represented by counsel. Thus, the employee must advise the board at the time the grievance is advanced to the third step that the employee will be or is represented by legal counsel. The role of the representative or legal counsel is to assist the employee and is not to be actively involved in advocating or arguing on behalf of the employee or to examine witnesses.
- f. The LDSS Board must provide a written response to the employee within five (5) work days following the third-step meeting. That response is to be provided on the original Grievance Form or an attachment to the Grievance Form.

5. Qualifying the Grievance for the Administrative Hearing

- a. If the LDSS Board's response is unacceptable to the employee, the employee may request qualification of the grievance for an administrative hearing. The employee must document this request on the original Grievance Form.

Chapter 7 – Discipline and Termination of Employment

- b. The qualification request must be received by the Director within five (5) work days following the date the employee received the written third-step response to the grievance.
- c. Acting on behalf of the LDSS Board, within five (5) workdays of the Director's receipt of the qualification request, the Director must determine whether the grievance qualifies for an administrative hearing and return the original grievance record to the employee with the written qualification decision.
- d. If it is determined that the grievance does not qualify for an administrative hearing, the employee may appeal the decision to the circuit court having jurisdiction in the locality where the employee is/was employed.
 - (1) An appeal is made by filing a notice of appeal with the LDSS Board within five (5) work days following the date the employee received the qualification decision. The appeal must be documented on the original grievance record.
 - (2) Within ten (10) calendar days following the date of the qualification appeal, the Director, on behalf of the LDSS Board, shall transmit to the clerk of the circuit court for that jurisdiction a copy of the full grievance record, the qualification decision of the Director, the notice of appeal, and any exhibits.
 - (3) A list of evidence furnished to the circuit court shall also be furnished to the employee.
 - (4) A scheduling request must be made to the clerk of the circuit court for that jurisdiction. The circuit court is required to hear the appeal on this issue within thirty (30) days of receiving the grievance record.
 - (5) The circuit court may affirm, reverse, or modify the decision of the LDSS.
 - (6) The circuit court must render a final decision 15 days after the conclusion of the hearing of the appeal. The circuit court's decision cannot be appealed.

E. Administrative Hearing

If the grievance is determined to qualify for an administrative hearing, the grievance will proceed to a hearing before a panel or an administrative hearing officer as provided below:

1. In cases involving a termination or retaliation, the LDSS Board may choose to use an administrative hearing officer. If a hearing officer is used, the hearing officer shall be appointed from a list maintained by the Executive Secretary of the Virginia Supreme Court. The costs for the hearing officer will be borne by the LDSS.

Chapter 7 – Discipline and Termination of Employment

2. For all hearings, except those for which a hearing officer is appointed, the panel shall be formed as follows:
 - a. A panel shall consist of three members:
 - (1) One member appointed by the employee;
 - (2) One member appointed by the LDSS; and
 - (3) A third member selected by agreement of the two panel members or, if the two do not agree, by appointment of the Chief Judge of the circuit court in the jurisdiction in which the grievance arose.
 - b. The employee and the LDSS must select their panel members within five (5) work days following their receipt of notice that the grievance qualifies for an administrative hearing. Each party shall notify the other of the name, address, telephone, and e-mail address of the panel member chosen as soon as possible.
 - c. The employee's and the LDSS's panel members shall discuss the selection of a third member. If agreement cannot be reached within five (5) work days, the panel members shall notify the Chairman of the LDSS Board and the employee of their failure to agree. The Chairman of the LDSS Board will notify the Chief Judge of the circuit court for that jurisdiction that agreement was not reached and request that the Judge appoint the third panel member.
 - d. The third panel member shall be the chairperson of the panel.
 - e. To insure an impartial panel, such panels shall not be composed of any person having direct involvement with the grievance being heard or with the problem giving rise to the grievance. Persons so excluded include:
 - (1) Any person having a direct involvement in the grievance or the complaint or dispute giving rise to the grievance;
 - (2) Supervisors and managers of the grievant and the Director;
 - (3) Persons residing in the same household as the grievant;
 - (4) Relatives or the spouse of a party;
 - (5) Any attorney who has any involvement in the grievance or the dispute giving rise to the grievance; and,
 - (6) The partner, associate, employee or co-employee of any Attorney involved in the grievance or dispute giving rise to the grievance.

Chapter 7 – Discipline and Termination of Employment

- f. The full panel selection should be completed by the tenth (10th) work day following qualification for an administrative hearing. However, this time limit may be extended in instances where the agreement on a third panel member has not been reached.

3. Communication with Panel Members/Hearing Officer

The parties should not discuss the substance of the grievance or the problem giving rise to the grievance with any panel member or the hearing officer prior to the administrative hearing. All matters requiring the attention of the panel/hearing officer should be communicated in writing with copies to all parties.

4. Hearing Date

The full panel/hearing officer will set the date, time, and place for the administrative hearing, which should be held within ten (10) work days following the selection of the full panel or appointment of the hearing officer. The panel chairperson/hearing officer shall immediately notify the employee and the LDSS of the hearing date. The administrative hearing shall be conducted in the locality where the employee is/was employed, unless the hearing officer/panel unanimously decides that another location is appropriate.

5. Case Presentation

The employee and the LDSS may be represented by legal counsel, or other representative, at the administrative hearing. Such representatives may examine, cross examine, question, or present evidence before the panel. The representative does not have to be an attorney. If a party is represented, the representative may not provide testimony or be called as a witness by the party s/he is representing.

6. Administrative Hearing Procedure

- a. The panel/hearing officer shall determine the propriety of attendance at the administrative hearing of persons not having a direct interest in the hearing.
- b. The panel/hearing officer may, at the beginning of the administrative hearing, ask for statements clarifying the issues involved.
- c. In a grievance involving a disciplinary action, the LDSS shall present its case first. In all other grievances, the employee shall proceed first. The panel/hearing officer may, at its discretion, vary this procedure, but shall afford full and equal opportunity to all parties for presentation of any material or relevant proofs.
- d. The employee and Director, or their representatives, shall present their claims and proofs and witnesses who shall submit to questions or other examination.

Chapter 7 – Discipline and Termination of Employment

- e. Exhibits may be received in evidence, and when so received shall be marked and made part of the record.
- f. The parties shall produce such additional evidence as the panel/hearing officer may deem necessary to gain an understanding of and make a determination about the dispute. The panel/hearing officer shall be the judge of the relevance and materiality of the evidence offered. All evidence shall be taken in the presence of the full panel/hearing officer and of the parties.

7. Hearing Decision

- a. The panel/hearing officer, in rendering its decision, shall be guided, but not necessarily bound by the relief specified by the employee in the grievance. The panel shall render its decision in writing within thirty (30) calendar days of the administrative hearing and distribute copies to the employee and the LDSS Board. If the decision is being made by a panel, it shall be decided by a majority vote and shall be set forth in writing. The administrative hearing decision of the panel/hearing officer shall be final and binding provided that the relief is consistent with the provisions of law and written policy.
- b. A party may challenge an administrative hearing decision on the basis that the relief granted is not consistent with law and/or written policy. Such appeal must be made to the LDSS Board in writing, and it must be received by the Board within 5 workdays following the challenging party's receipt of the written administrative hearing decision.
- c. If a written request to reconsider the panel decision is submitted to the panel chairperson or hearing officer within five (5) work days of receipt of the decision, the panel, by majority vote or the hearing officer, may elect to review its decision and/or reopen the hearing for good cause shown.
- d. Appeals of administrative hearing decisions shall be decided by the LDSS Board within 10 workdays of the LDSS Board's receipt of the appeal, unless the LDSS Board has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the Commonwealth's Attorney.
- e. The LDSS Board is responsible for ensuring that the administrative hearing decision is implemented.
- f. Either party may petition the circuit court in the jurisdiction where the employee is employed for an order requiring implementation of the decision of the panel/hearing officer.

F. Compliance

Chapter 7 – Discipline and Termination of Employment

The failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the administrative hearing, without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five (5) work days of receipt of written notification by the other party of the compliance violation. Such written notification by a grievant shall be made to the Director, unless the Director is the grievant. If the Director is the grievant, the notification should be made to the LDSS Board.

The Director shall determine compliance issues unless the grievant is the Director. If the Director is the grievant, the LDSS Board shall make the determination on compliance. Compliance determinations may be challenged by the grievant if a petition is filed with the circuit court in the jurisdiction in which the employee is employed within thirty (30) calendar days of the compliance determination.

The Virginia Department of Social Services has no role or responsibility in assuring that the LDSS has complied with the Grievance Procedure steps.

Chapter 7 – Discipline and Termination of Employment

[This page has been intentionally left blank.]

Chapter 7 – Discipline and Termination of Employment

Section III Termination / Separation

Purpose

The purpose of this policy is to address types of separation from the LDSS, related procedures, and the benefits to which separated or terminated employees may be entitled.

Scope

This policy applies to all employees.

A. Definitions

1. Accrued leave

Annual, sick, compensatory and/or overtime leave that an employee has accumulated per pay period based on their years of service.

2. Discharge

An employee's involuntary separation from employment.

3. Layoff

An involuntary separation from employment as a result of a workforce reduction or re-organization.

4. Reasonable notice

At least two weeks notice before voluntary separation or resignation from employment.

5. Resignation

An employee's voluntary separation from employment.

6. Separation

Voluntary or involuntary end of employment.

7. Termination

Involuntary loss of employment due to disciplinary discharge, substandard performance, violation of the Standards of Conduct or other basis.

Chapter 7 – Discipline and Termination of Employment

B. Types of Termination / Separation

1. Resignation

- a. Resignation is an employee's voluntary separation from employment with the LDSS.
- b. Advance Notice
 - (1) An employee who plans to resign is asked to provide the Director with at least two weeks' notice.
 - (2) An employee's failure to give reasonable notice of the resignation may be documented in the employee's personnel file.
 - (3) Once the resignation has been received by the LDSS, it is final, unless:
 - a. The Director or LDSS Board makes or expresses an intent to make a counteroffer within five (5) workdays of receipt of the resignation as authorized in the approved local compensation plan for that local department; or,
 - b. the employee provides written notice of rescission of the resignation to the Director or LDSS Board (when the employee is the Director) within five (5) workdays and the employee's rescission is accepted in writing by the Director or LDSS Board (when the Director is the employee).
 - c. Acceptance of a rescission of resignation is at the discretion of the Director or Local Board (when the employee is the Director) and is not grievable.

2. Discharge/Termination

For the policy on Discharge/Termination, see the Standards of Conduct, Performance Evaluation policies.

- a. Employees discharged or terminated should be provided with a pre-termination notice.
- b. Non-probationary employees who are discharged or terminated should be provided with an opportunity for a pre-termination meeting.

3. Layoff

For the policy on layoff, see Layoff policy earlier in this Chapter.

Chapter 7 – Discipline and Termination of Employment

4. Separation

Voluntary or involuntary separation may occur due to an employee's: resignation; layoff; disciplinary discharge; failure to return from leave with or without pay status, or death. There may be other causes of separation from employment in addition to the reasons listed above.

Separation upon the employee's failure to return to work following the expiration of a period of leave with or without pay is treated as job abandonment for purposes of unemployment compensation, if notice of intent not to return was not provided to the LDSS.

C. Benefits upon Termination / Separation

In addition to retirement benefits, employees separating from employment with the LDSS may be entitled to the following:

1. Payment for Accrued Leave

Employees separating from employment with the LDSS may be entitled to receive payments for accrued annual, sick, compensatory and/or overtime leave, in accordance with the various leave policies. See policy on General Leave and Medical Leaves of Absence in Chapters 3 and 4, respectively.

2. Health Insurance

Employees separating from employment with the LDSS may be eligible to continue health plan coverage under the provisions of the Continuation of Health Plan Coverage Policy.

D. Recording Date of Termination / Separation and Accrued Leave

1. Employee Not on Leave

When an employee who is not on leave terminates or separates from LDSS' employment, the termination/separation date is the last day the employee worked.

2. Employee on Leave

When an employee on leave with or without pay terminates or separates from LDSS's employment, the termination/separation date is the last day that the employee was on leave.

Chapter 7 – Discipline and Termination of Employment

[This page has been intentionally left blank.]

Chapter 7 – Discipline and Termination of Employment

Section V Extended Health Plan Coverage

Purpose

The purpose of this policy is to notify employees of continuation of health plan coverage and/or flexible medical spending accounts after an event which results in the loss of coverage.

Scope

This policy applies to all employees who participate in the LDSS health plan or in its flexible spending accounts.

A. Definitions

1. COBRA

The Consolidated Omnibus Budget Reconciliation Act (COBRA), and its amendments, which mandate continuation of health plan coverage under certain circumstances.

2. LDSS

The LDSS or its Plan Administrator.

3. Gross Misconduct

Egregious or willful misconduct in disregard of the LDSS' interest. Examples are violence in the workplace and mishandling of LDSS funds.

4. Qualified Beneficiary Employee

An employee who loses health plan coverage when a qualifying event occurs such as reduction of work hours, placement on leave without pay, or employment terminates for any reason other than gross misconduct.

5. Qualified Beneficiary Spouse

A spouse or former spouse of an employee who was participating in the health plan or other medical benefit on the day prior to loss of coverage due to a qualifying event.

6. Qualified Beneficiary Dependent

Chapter 7 – Discipline and Termination of Employment

A dependent as defined under the policy who was participating in the health plan or other medical benefit on the day prior to loss of coverage due to a qualifying event. In addition any child born to or placed for adoption with a covered employee during the period of extended health plan coverage is considered a qualified beneficiary.

7. Qualified Event

An event that will result in the loss of health plan coverage unless continued coverage is elected.

8. Qualified Health Plan

A group health plan that provides health and/or medical care. Such plan may include certain § 125 cafeteria plans (e.g., flexible health care spending accounts); health reimbursement arrangements, employee assistance programs, and long term care plans.

B. Qualifying Events

The following events are qualifying events that cause a loss of plan coverage and qualify the employee, the employee's spouse, the employee's former spouse, or the employee's dependents for continuation of health plan coverage:

1. For Employee

When health plan coverage is lost due to:

- a. reduction in work hours;
- b. leave without pay; or
- c. the employee's loss of employment for any reason other than gross misconduct.

2. For Employee's Spouse

When health plan coverage is lost due to:

- a. the death of the employee;
- b. the reduction in the employee's work hours ;
- c. the employee's loss of employment for any reason other than gross misconduct;
- d. the employee becomes eligible for Medicare benefits; or
- e. the employee divorces or legally separates .

Chapter 7 – Discipline and Termination of Employment

3. Qualifying Event for Dependent of Employee

When health plan coverage is lost due to:

- a. the employee's death;
- b. reduction in the employee's work hours;
- c. the employee's loss of employment for any reason other than gross misconduct;
- d. the employee's eligibility for Medicare;
- e. parents' divorce or legal separation; or
- f. the dependent's loss of eligibility for dependent status.

C. Additional Information on Extended Health Plan Coverage

If an employee has questions about extended health plan coverage, the employee should contact the LDSS health plan administrator

D. Notice by Employee

All notices that an employee and/or the qualified beneficiaries must give are also to be made to the LDSS health plan administrator. An employee and/or the qualified beneficiaries must also notify the contact person of any change in the status or the address of the qualified beneficiaries or the employee.

E. Notice of Qualifying Event

An employee and/or the qualified beneficiaries must notify the LDSS of a qualifying event within 60 days of the qualifying event. Notification should be made to the LDSS health plan administrator. Upon receipt of such notice, the LDSS will provide the employee and qualified beneficiaries with an election of extended health plan coverage form.

F. Continued Plan Participation

1. Election

Employees and other qualified beneficiaries each have the right to independently make an extended coverage election to continue health benefit coverage. A covered employee or the covered employee's spouse may, however, elect on behalf of all other qualified beneficiaries. A parent or legal guardian may elect on behalf of a minor child. An employee and/or each qualified beneficiary may waive extended

Chapter 7 – Discipline and Termination of Employment

health plan coverage independently of each other (e.g., the employee decides not to elect continuation coverage but his spouse does).

2. Time Period to Make Election

An employee and/or qualified beneficiary has 60 days from receipt of the Election Notice or the date of loss of coverage, whichever is later, to make an election. If an election is made during this time period, the coverage dates back to the qualifying event and there is no gap in coverage.

3. Revocation of Waiver of Coverage

If an employee or qualified beneficiary waives extended health plan coverage, the waiver may be revoked at any time during the 60-day election period. If revocation of the waiver occurs, continuation coverage begins on the date the waiver is revoked, not the date of the qualifying event. This means that there will be a gap in coverage.

4. Length of Continuation Coverage

Continuation coverage is for a period of 18 months unless the employee leaves for military duty. Employees leaving for military duty have the right to elect up to 24 months of coverage. This period can be extended for an additional 11 months if a qualified beneficiary has been determined to be disabled by the Social Security Administration during the continuation period. The disabled qualified beneficiary must provide the LDSS with notice of the disability determination within 60 days of such determination and if the determination of disability is within the initial 18 month continuation period, participation will be extended for another 11 months.

5. Second Qualifying Event

If during the extended health plan coverage period, a second qualifying event occurs, the employee and/or qualified beneficiary may elect an additional 18 months of coverage (total 36 months). Notice of a second qualifying event must be given to the LDSS within 60 days.

6. Date Coverage Begins

Coverage begins on the date that coverage would otherwise have been lost, provided that an election is made within the election period and the premium payments are made in full and on a timely basis. For example, if the qualifying event is on August 1 and the election of coverage is made on September 19, all “covered” medical expenses that were incurred during the August 1 through September 19 period would be paid for under the plan, provided full, timely payment of the premiums is made.

7. Failure to Elect Continuation Coverage

Chapter 7 – Discipline and Termination of Employment

If an employee waives making an election and coverage is lost, and if the employee or qualified beneficiary joins another group health plan within 63 days, pre-existing exclusions will not apply under the new plan.

G. Premium Payments

1. First Payment

If continuation coverage is elected, the first payment must be made within 45 days of the date of the election. The first payment due will be for the full amount of premiums owed from the date of the qualifying event to the date payment is made.

2. Subsequent Payments

Each monthly payment following the initial payment must be made by the due date or coverage will cease. There is a 30 day grace period which, if a late payment is made within that period, coverage will be reinstated.

3. Amounts of Payment

The employee and/or qualified beneficiary must pay 100% of the premium. The LDSS may charge an administrative fee of 2%; if this is done the premium payments would be 102% of the premium costs. If disability occurs, the plan could charge 150% of the premium costs after the initial 18 month period.

4. Termination for Failure to Pay Premiums

The failure to make a timely payment will be cause for termination of continuation coverage.

H. Coverage Ends

1. Terminates at End of Maximum Coverage Period

Coverage will end at the end of the maximum period of coverage, 18 months in most instances, 29 months if a qualified beneficiary is disabled, or 36 months if a second qualifying event occurred.

2. Coverage Can End Earlier Than Maximum Coverage Period

Coverage may end earlier than the maximum coverage period if one of the following occurs:

- a. Premiums are not paid on a timely basis.
- b. The LDSS ceases to maintain any group health plan.

Chapter 7 – Discipline and Termination of Employment

- c. If after an extended health plan coverage election, coverage is obtained in another employer group health plan. However, if the coverage in another group health plan was obtained prior to the election, continuation coverage can not be terminated by the LDSS, or if the coverage in another plan has pre-existing exclusions or limitations or is not as comprehensive as the extended health coverage, the LDSS cannot terminate coverage.
- d. If after an extended health plan coverage election, Medicare coverage is obtained during the continuation period.

I. Other Provisions

1. Open Enrollment

An employee or other qualified beneficiary may add individuals to the health plan during the open enrollment period on the same terms as regular plan participants. These added insureds, however, do not have extended health plan coverage rights and their participation in the plan is only as long as the qualified beneficiary remains eligible and includes them in the plan.

2. Appeals on Denial of Coverage

If a claim for plan benefits is submitted and is denied, the covered individual will receive notice of the reason for the denial. This notice will be in writing and must be provided within 90 days of the submittal of the claim. The notice will state the reasons for the denial, any additional information needed to support the claim, and procedures for appealing the denial. The covered individual has 60 days to appeal the denial and within 60 days the plan will provide a decision on the appeal. If the claim is still denied, the covered individual can contact the State Corporation Commission, Insurance Division, in Richmond to find out information on how to appeal the plan's denial of coverage.

3. Family and Medical Leave

An employee who is on Family and Medical Leave is entitled to have health plan coverage continue for the duration of the leave on the same payment terms as if the employee had been working. This coverage is not the same as extended health plan coverage. Family and Medical Leave is not a qualifying event for extended health plan coverage; however, if at the end of the Family and Medical Leave the employee notifies the employer that he or she will not be returning to the position, extended health plan coverage continuation rights commence at that point.

J. HIPAA Benefits

1. Conversion Rights

Chapter 7 – Discipline and Termination of Employment

Some plans permit a covered individual to convert to an individual policy at the end of extended health plan coverage. If the LDSS's plan permits such an election, the employee and/or covered beneficiaries will receive a notice of such option no later than 180 days before the end of coverage. The premium for the individual policy may cost more than the extended health plan coverage and may provide fewer benefits. If an election to an individual policy is made, pre-existing conditions cannot be imposed on the coverage. The conversion option is not available if the qualified beneficiary terminates coverage prior to the end of the coverage period.

2. Enrollment in Spouse's Plan

If extended health plan coverage is exhausted, HIPAA (the Health Insurance Portability and Accountability Act) gives a qualified beneficiary a right to enroll in a spouse's plan for which the beneficiary would otherwise be eligible to participate. The beneficiary does not have to wait for the open enrollment period to join. However, the beneficiary must request such coverage within 30 days of the date extended health plan coverage ends.

3. Certification of Credible Coverage

At the time participation in the health plan ends (e.g., at termination and at the end of the extended health plan continuation of coverage period) each covered individual will be sent a certificate of creditable coverage. This form allows the former plan participants to enroll in another group health plan without any pre-existing exclusions or limitations, provided such enrollment occurs within 63 days of the termination of coverage.

Chapter 8 – Personnel Records

Chapter 8 Table of Contents

<u>Section</u>	<u>Page</u>
I. Personnel Records	165
A. Definitions	165
B. Collection of Personnel Information	165
C. Maintenance of Personnel Records	166
D. Disposition of Personnel Files	168
E. Access to Personnel Records	169

Chapter 8 – Personnel Records

[This page intentionally left blank.]

Chapter 8 – Personnel Records

Section I Personnel Records

Purpose

It is the purpose of this policy to set forth the procedures for the maintenance and retention of personnel records.

Scope

This policy applies to the personnel records of all local department (LDSS) employees and LDSS recruitment records.

A. Definitions

1. Personnel Records

Any papers, letters, documents, reports or other materials, regardless of physical form or characteristics (including electronic records), whose subject is a current or former employee of the LDSS, or applicant for employment with the LDSS, and which have been prepared or obtained in the transaction of LDSS business by an employee or officer of the LDSS.

2. Employee Personnel File

The file in which certain personnel records pertaining to an individual employee and having similar access requirements are maintained.

3. Restricted Access Files

Files where certain highly sensitive personnel records are maintained.

4. Need-to-know

Occurs when access to specific personnel records has been determined to be necessary to conduct official LDSS business.

B. Collection of Personnel Information

1. Relevance and Accuracy of Information

The LDSS must ensure that only information that is relevant, accurate and is required by law or necessary for the effective and efficient operation of the personnel system is collected and retained.

Chapter 8 – Personnel Records

2. Social Security Number

Social Security numbers (SSN) shall be collected only as authorized under 26 U.S.C. § 6011, the U.S. Code of Federal Regulation § 31.6011(b)-2(b), and § 2.2-3808. Social Security numbers will only be used to:

- a. Comply with federal, state, and local reporting requirements.
- b. Administer benefits programs.
- c. Effect personnel transactions related to employment status changes.

3. Confidentiality of Personnel Records

All personnel records contain personal information and are confidential in nature. Personnel records must be maintained in secure locations with access limited to the local director and those LDSS officers and employees determined by the local director, local board and/or VDSS to have a “need-to-know”.

C. Maintenance of Personnel Records

1. Employee Personnel File

The LDSS will maintain a personnel file for each employee. The Employee Personnel File should contain, at a minimum, the following personnel records:

- a. Applications for Employment.
- b. Letters offering/accepting employment.
- c. Report of appointment or change of status.
- d. Performance evaluations. [Any documents related to interim performance evaluations should not be kept in the Employee Personnel File, except as such evaluations serve as supporting documentation to an annual evaluation or to a Written Notice or as part of an end of probationary or conditional status period evaluation.]
- e. Consent and/or acknowledgement forms.
- f. Written Notices issued under the Standards of Conduct.
- g. Authorizations for salary actions.

Chapter 8 – Personnel Records

- h. Position description and performance standards/plans.
- i. Other forms used to initiate personnel transactions.

2. Employee Personnel File or Other LDSS Files

At the discretion of the LDSS, the following personnel records may be included in the Employee Personnel File or in a separate file(s) as determined by the local director, local board or VDSS:

- a. State and federal withholding forms.
- b. Benefit records – including health insurance enrollment forms, retirement forms, life insurance beneficiary designation forms and other benefit forms.
- c. Leave records and time sheets.
- d. Training certificates and/or other training or scholastic records including records related to educational assistance.

3. Restricted Access Files

Certain personnel records, due to their highly sensitive nature, require more restricted access. These records must be maintained securely and separately as indicated below.

- a. Because state and federal law require that certain confidential information, the following documents must be kept secure and separate from the Employee Personnel File:
 - (1) Medical and/or mental health records (including those submitted to support a request for leave) and other personnel records containing medical or mental health information including health insurance or worker's compensation documents.
 - (2) Discrimination and/or retaliation complaint files.
 - (3) Reports of arrests, convictions, and/or the results of criminal history background checks.

During the hiring or disciplinary process for which they were obtained, reports of arrests, convictions and/or the results of criminal history background checks should be retained in a locked, separate file. After a hiring or disciplinary decision is made, the reports should be destroyed according to the provisions of Va. Code § 19.2-389 and US Code 28 U.S.C. 534 & 28 CFR 20 and a brief note regarding the outcome of the

Chapter 8 – Personnel Records

hiring or disciplinary decision should be kept in a confidential portion of the disciplinary or recruitment file.

- b. For administrative and business purposes, the following information should also be maintained separate from the Employee Personnel File.
 - (1) Recruitment and selection records, including position descriptions, job announcements, advertisements, applications, selection criteria, evaluations, rankings, and letters of recommendation and/or reference.
 - (2) Employment Eligibility Verification (I-9) forms.
 - (3) Records of investigations.
 - (4) Exit interviews (anonymity should be maintained).
 - (5) Unemployment Compensation documents.

4. Supervisor's Files

A supervisor may maintain personnel records on employees in their work unit which are useful for performance management or scheduling purposes. All medical records should be forwarded to the local director for proper disposition. Upon request, employees must be given access to any personnel records in the supervisor's files in which the employee is the subject unless such information is protected from disclosure to the employee by law.

D. Disposition of Personnel Records

1. Disposition of Supervisors' Files

- a. Personnel records maintained by supervisors are considered working files and information in them should be maintained only as long as it is useful to the supervisor. Typically, supervisors' notes are maintained during the performance period for the purpose of documenting performance during the period of evaluation. Once the performance evaluation is completed, information not needed to document on-going issues should be destroyed.
- b. When employees separate from employment, supervisors' files should be destroyed in a manner that prevents accidental disclosure of personal information. Interim evaluations performed to provide input for the evaluation of employees who are transferring laterally, or to provide information to new

Chapter 8 – Personnel Records

supervisors (when supervisors transfer) should be forwarded to the local director for appropriate transmittal, destruction or retention.

2. Disposal of Personnel Records

- a. The Library of Virginia Records Management policies regarding retention and destruction of personnel records must be followed. Information regarding record retention schedules may be obtained from the Library of Virginia Archival and Records Management Services Division (www.lva.virginia.gov).
- b. Personnel records must be disposed of in a manner that prevents accidental disclosure of personal information.

E. Access to Personnel Records

1. Employee Access to Personnel Records

In accordance with the provisions of Code of Virginia §2.2-3705.1, upon request, an employee must be given access to any personnel records where the employee is the subject unless such records are prohibited from disclosure to the employee by law.

2. Third Party Access to Personnel Records

- a. According to the provisions of Code of Virginia §2.2-3705.8, the following personnel information concerning employees of public bodies must be disclosed to third parties upon request and may be disclosed without the knowledge and consent of the subject employee:
 - (1) Contracts between a public body and its officers and employees, other than contracts settling public employee employment disputes held confidential as personnel records under Code of Virginia §2.2-3705.1;
 - (2) Employee's position title;
 - (3) Employee's job classification title;
 - (4) Official salary or rate of pay, if such pay exceeds \$10,000 per year; and/or
 - (5) Records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body.
- b. Other personal information/personnel records may not be disclosed to third parties without the written consent of subject employee.

Chapter 8 – Personnel Records

- c. The counsel for the LDSS should be informed immediately of any subpoenas or requests for information received from the court. The LDSS may choose to inform subject employees of such subpoenas and requests for information, but is not required by law to do so. Unless advised otherwise by counsel, the LDSS must comply with a subpoena.
- d. All requests for information about employees by third parties should be directed to the local director or designated staff.