

# ORANGE COUNTY WATER DISTRICT PERSONNEL MANUAL

EFFECTIVE AUGUST 4, 2021



SINCE 1933

**THE TERMS IN THIS MANUAL ARE NOT IMPLIED TO BE A CONTRACT,  
BUT RATHER A GUIDE AND STATEMENT OF POLICES**

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## **1. INTRODUCTION**

The Orange County Water District (“District”) was formed by an act of the California Legislature in 1933 to protect and manage Orange County’s massive groundwater basin, which had been over-drafted by excessive pumping and diversions of the Santa Ana River by upstream users. The act specifically provides for:

- A. The management of the groundwater basin;
- B. The conservation of the groundwater basin; including both quality and quantity of water; and
- C. The protection of Orange County’s water rights and the natural flows of the Santa Ana River.

The District includes in excess of 367,000 acres, generally overlying the coastal plain of the Santa Ana River watershed, all within the boundaries of Orange County.

A Board of Directors, composed of ten members representing various areas comprising the District, governs the affairs of the District.

## **2. ORGANIZATION**

The General Manager is directly responsible to the Board of Directors for the administration of polices established by the Board. To assist the General Manager, the District employs a staff consisting of administrative, technical, and field personnel.

The District's activities are divided into functional groups, with managers assigned to each function.

### **3. EMPLOYMENT CONDITIONS**

It is the policy of the Orange County Water District to recruit, hire, and promote for all job classifications without regard to race, religion, creed, color, national origin, age, marital status, ancestry, medical condition, physical handicap, disability, pregnancy, veteran or other protected status, sexual orientation, gender, gender identity, or on the basis of any perception that an applicant or employee is associated with someone who has or is perceived to have these.

Decisions on employment are to be based upon an individual's qualifications for the position being filled as described below.

#### **3.1 Selection of Employees**

All persons considered for employment with the Orange County Water District shall be qualified to perform the duties of the position for which they are employed. All new employees will be required to have a medical examination and based on the job classification, a pre-employment drug test before reporting for work. All employees shall be required to sign an Oath of Allegiance pursuant to State law.

All new employees must provide necessary documentation to prove identity and the right to work in the United States in accordance with Federal and State Immigration and Naturalization laws. Failure to provide such documentation will result in disqualification from selection and/or grounds for immediate termination.

Persons related to District employees are eligible for employment by the District; however, for business reasons of supervision, safety, security, or morale, the District may refuse to place one spouse or relative (including relatives by marriage) under the direct supervision of the other spouse or relative or refuse to place both spouses or relatives in the same department, division or facility if the work involves potential conflicts of interest or other hazards greater for married couples or relatives than for other persons. If two District employees marry, the District shall make reasonable efforts to assign job duties so as to minimize problems.

#### **3.2 At-Will Employment Statement**

It must be remembered that the employment relationship is based on mutual consent of the employee and OCWD. Accordingly, at any time, either the employee or the District can terminate the employment relationship at-will, with or without cause or notice. This at-will relationship permits the District to change the terms and conditions of employment with or without notice, with or without cause, including, but not limited to, termination, demotion, promotion, transfer, compensation, benefits, duties, and location of work. There is no agreement, express or implied, that employment will continue for a set period of time, or that any person's employment will be terminated only under particular circumstances. While supervisors and managers have certain hiring authority, no supervisor or manager or representative of the District has any authority to alter the at-will relationship. Only

the General Manager, with the permission of the Board of Directors, may amend the policy in a written statement, at any time. This policy becomes effective for employees hired after October 1, 2003, for the following job classifications only:

- A. General Manager
- B. Assistant General Manager
- C. Chief Financial Officer and/or Treasurer

### **3.3 New Positions**

The General Manager is authorized to establish new positions where required in the conduct of the District's affairs, subject to the approval of the Board of Directors.

### **3.4 Full-time Regular Employee**

An employee who has served the required probationary period satisfactorily and is employed to work 2,080 hours a calendar year in an established position requiring work on a regular schedule (i.e. 40 hours minimum per workweek), unless otherwise authorized by the Board of Directors, is classified as a full-time regular employee.

### **3.5 Part-time Regular Employee**

An employee who has satisfactorily served the required probationary period and is employed to normally work less than forty hours per week (and no more than 25 hours per workweek) in an established position on a year-around basis shall be classified as a regular part-time employee. Regular part-time employees are eligible for sick leave and vacation benefits as defined in this manual. Part-time employees are not eligible for any other employee benefits unless designated by State or Federal law.

### **3.6 Probationary Employee**

Every regular new employee (with the exception of at-will employees) in a full- or part-time position shall serve a probationary period of six months exclusive of time off for leaves of absence as hereinafter permitted. The probationary employee will be evaluated periodically during the probationary period and is subject to dismissal, with or without cause, at the discretion of the General Manager. The termination can be exercised at any time during the probationary period. Effective on the first day following completion of the probationary period, if the employee's performance has been satisfactory and the General Manager approves his/her retention, the employee shall be considered thereafter a full- or part-time regular employee of the District.

During the probationary period, an employee will accrue sick leave benefits; however, vacation benefits will accrue after the probation period has been passed. The employee shall earn six months of accrual of vacation hours upon the successful completion of the probationary period. Accrued sick leave hours may be used during the probationary period.

### **3.7 Temporary Employee**

An employee serving in a position in which the requirements of the services performed are of a temporary nature shall be classified as a temporary employee for a period not to exceed twelve months. This classification includes, but is not limited to, personnel employed for the following: season peak workloads, emergency extra workloads, necessary vacation relief, or special investigative study workloads. Temporary employees are not eligible for any employee benefits with the exception of certain sick leave benefits if they meet the eligibility requirements as provided by law. Temporary employees are at-will employees and can be terminated at the discretion of the General Manager with or without cause and with or without notice.

### **3.8 Limited Term Employee**

An individual who is temporarily employed by entering into an Employment Contract for a specified period of time as approved by the Board of Directors is a "Limited Term Employee." Limited Term Employees are only eligible for those benefits as provided for in the written Employment Contract.

### **3.9 Interns**

In an effort to provide meaningful training and work experience for college students pursuing academic studies related to the District's mission and goals, interns may be employed for a period of up to six months after their graduation, subject to the terms set forth within the internship program. Interns are not eligible for employee benefits with the exception of certain sick leave benefits if they meet the eligibility requirements as provided by law. Interns are at-will and can be terminated at the discretion of the Department Manager with or without cause and with or without prior notice.

### **3.10 Outside Employment**

An employee shall not engage in any employment, enterprise, or outside activity which is in conflict with his/her duties, functions, responsibilities, or the department by which he/she is employed, nor shall the employee engage in any compensatory outside activity which will directly, or indirectly, contribute to the lessening of his or her effectiveness as an employee.

#### **3.10.1 Authorization**

Any employee wishing to engage in an occupation or outside activity for compensation shall inform the Department Manager of such desire, providing information in writing as to the time required and the nature of such activity, and such other information as may be required; and the Department Manager shall confer with the General Manager to determine whether or not such activity is compatible with the employee's employment with the District.

If the General Manager determines such activity is compatible, he/she may authorize the activity in writing and shall send a copy to the Human Resources Director.

Said authorization shall be valid only for the work and period prescribed therein.

### **3.10.2 Determination of Inconsistent Activities**

In making a determination as to the consistency or inconsistency of outside activities, the General Manager shall consider, among other pertinent factors, whether the activity:

- A. Involves the use for private gain or advantage of District time, facilities, equipment, and supplies, or the badge, uniform, prestige, or influence of one's District office or employment;
- B. Involves receipt or acceptance by an employee of any money or other consideration from anyone other than the District for the performance of an act which the employee, if not performing such act, would be required or expected to render in the regular course of his/her District employment or as part of his/her duties as a District employee;
- C. Involves the performance of an act in other than his/her capacity as a District employee, which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement by such employee or the department by which he/she is employed;
- D. Involves conditions or factors which would probably, directly or indirectly, lessen the efficiency of the employee in his/her regular District employment or conditions in which there is a substantial danger or injury or illness to the employee.

### **3.10.3 Use of District Equipment Prohibited**

No District-owned equipment, autos, trucks, instruments, tools, supplies, machines, or any other item which is the property of the District shall be used by an employee while said employee is engaged in any outside employment or activity for personal use, for compensation or otherwise.

No employee shall allow any unauthorized person to rent, borrow, or use any of the items mentioned above.

### **3.10.4 Violations and Penalties**

Any violation of the provisions herein contained respecting outside employment or activity and use of District property shall constitute sufficient grounds for disciplinary action, up to and including dismissal.

## **4. WORKING HOURS, PREMIUM PAY, AND OVERTIME**

### **4.1 Working Hours**

The official workweek of the District shall consist of a forty-hour workweek. The General Manager and his/her designee may require any employee temporarily to perform service in excess of the scheduled workday when public necessity or convenience so require for the effective conduct of District business. The General Manager shall be responsible for the determination of offices remaining open or closed, or maintain minimum staff, in any unusual circumstances such as disaster situations.

### **4.2 Rest Periods**

Employees may be allowed rest periods not to exceed fifteen minutes during each four consecutive hours of work. Rest periods shall be scheduled in accordance with the requirements of the department, but in no case shall rest periods be scheduled within one hour of the beginning or ending of a work shift or lunch period. As rest periods are allowed and not required, said rest periods shall be considered hours worked and employees may be required to perform duties, if necessary. Employees shall remain on-site during a paid rest period.

### **4.3 Lunch Periods**

Employees shall be permitted to take a meal period, either not to exceed thirty minutes or one hour, at a time designated by the department at or near the middle of the shift, with such time not being considered hours worked. Supervisors shall determine length of lunch period.

Meal periods shall be duty-free, with no restrictions placed on such periods.

### **4.4 Makeup Time**

If a non-exempt employee needs to take time off and desires to make up the time rather than to be docked or have the time charged to the appropriate accumulated leave balance, said employee may make up the time, with the prior approval of his/her supervisor, provided he/she does so within the same workweek in which the time was taken.

### **4.5 Overtime**

The Fair Labor Standards Act (FLSA) and amendments govern compensation for overtime thereto. The Fair Labor Standards Act classifies personnel into two classes: "exempt" and "non-exempt" employees. For purposes of the District, personnel are divided into "exempt" and "non-exempt" categories as follows.

#### **4.5.1 Exempt**

Exempt employees shall not be eligible for cash reimbursement for overtime, nor shall they be subject to docking of pay for absences of less than one day.

#### **4.5.2 Non-exempt**

Non-exempt employees shall receive cash reimbursement or Compensatory Time Off (CTO) accrual (at the discretion of the General Manager) at one and one-half times their regular rate of pay for all hours worked, at the request of the employee's supervisor, in excess of forty hours in a workweek.

#### **4.5.3 General Provisions**

For purposes of determining overtime compensation, regular rate of pay is the sum of employee's monthly base salary, plus shift differential and lead pay, if applicable.

The District will pay overtime for non-exempt employees at the rate of one and one-half times the regular rate of pay for all hours worked over forty in a workweek. For the purposes of calculating overtime, official District holidays (where the District is closed for business) will be considered as hours worked. Floating Holidays, CTO, and In-lieu Holiday hours are not considered hours worked for overtime purposes.

The maximum total accrued CTO for any eligible employee at any one time shall not exceed forty hours. In the event an employee who has forty hours accrued CTO on the books is required to work overtime, the employee will not have the option of selecting CTO credit but shall be paid for such overtime service. This provision does not include in-lieu holiday compensation credited as compensatory time for shift employees.

Overtime service shall not be used to earn fringe benefits or to complete probation or merit increase periods; however, CTO may be applied as part of the established workweek to earn fringe benefits and to serve out probation and merit increase periods.

Emergency service will be limited to work performed as follows:

- A. Emergency service necessary due to a major facility or plant failure necessary to protect the public health and safety.
- B. Work which becomes necessary to cover a regularly assigned shift that falls on an otherwise nonworking day or shift (generally applies to shift personnel).

#### **4.5.4 Overtime Settlement in Event of Separation**

In accordance with the FLSA, the use of accrued CTO to extend employment when an employee has actually vacated a position due to termination is not considered employment; therefore, an employee separating from employment with the District who has performed authorized overtime service for which he/she has not been compensated as provided for, shall be paid at the employee's average regular rate received during the last three years of employment OR the employee's final regular rate of pay, whichever is higher, for such accrued overtime service. When separation is caused by the death of an employee, payment shall be made to said employee's beneficiary. Nothing in this section shall be interpreted as preventing the General



Manager from filling a position vacated by separation immediately following the last day actually worked by the separated employee.

## **5. PAY PRACTICES**

### **5.1 Merit Increases**

Merit increases are granted in relation to an employee's demonstrated job performance. Supervisors and managers shall establish performance standards and communicate these expectations to each of their staff. In addition, supervisors and managers shall confer with each employee concerning his/her performance during that employee's performance review process.

#### **5.1.1 Merit Guidelines**

The amount of each merit increase will be determined by the performance of the employee, as documented on the "Performance Appraisal" form. The performance review should provide a fair and accurate evaluation of the employee's performance in the preceding year. The performance criteria are as follows:

##### **5.1.1.1 Performance Ratings**

- A. Outstanding – Consistently Exceeds Expectations (5)
- B. Very Good – Exceeds Expectations (4)
- C. Good Performance – Meets Expectations (3)
- D. Needs Improvement – Below Expectations (2)
- E. Unsatisfactory – Consistently Below Expectations (1)

##### **5.1.1.2 Definition of Performance Ratings**

- A. Consistently Exceeds Expectations (5): Job performance easily exceeds job requirements, performance approaches best possible attainment.
- B. Exceeds Expectations (4): Performance exceeds expectations established for the individual in most performance rated areas. It represents a very high level of proficiency in all job requirements.
- C. Meets Expectations (3): Performance is generally acceptable and satisfactory and meets expectations established for the individual. Performance may occasionally be above expectations established for the individual in some performance areas. It represents the level of an experienced, qualified employee.
- D. Below Expectations (2): Performance is often below expectations established for the individual. It represents deficiency in at least some job requirements.

E. Consistently Below Expectations (1): Performance is well under minimum expectations established for the individual. It represents unacceptable performance.

### 5.1.1.3 Merit Increase Procedures

All regular employees are eligible to receive a merit increase, which will be effective the first day of the pay period following the due date of their performance appraisal. Performance appraisals are due on the employee's anniversary date in their current position. The amount of the merit increase is determined by overall job performance rating received on the employee's Performance Appraisal document. The following merit table represents the merit increase designated for each Overall Performance Rating.

Overall Performance Rating	Merit Increase Percentage
1	0.00%
2	0.00%
3-	1.50%
3	2.00%
3+	2.50%
4-	3.00%
4	4.00%
4+	4.50%
5-	5.00%
5	5.50%
5+	6.00%

\*\*Employees whose salary falls at the top of their salary range are no longer eligible for a base-building merit increase.

**Merit increase percentages within the matrix, and annual associated budgets based on a percentage of the total salaries may be adjusted to reflect the District's financial position as well as changes in the market. This will occur during the budgeting process and prior to the beginning of each fiscal year.**

### 5.2 Promotional Pay Increase Policy

A promotion is the assignment of an employee to a different position in a higher salary range. Any salary increase granted at the time of a promotion shall not exceed 10%, unless the bottom of the salary range of the new position is more than 10%. The General Manager shall approve all promotional salary increases.

### 5.3 Probationary Increase Policy

Employees who successfully complete their probation period may be eligible for a salary increase, not to exceed 5%, based on performance during the probation period. **This is not automatic and will be reviewed on a case-by-case basis and approved by the General Manager.**

## **5.4 Paydays**

Every other Wednesday is designated as payday.

In the event of the death of an employee, any unpaid wages shall be made to said employee's designated beneficiary. Employees wishing to have their checks released to a friend or a spouse may fill out a release form, which can be obtained from the Human Resources Department.

## **5.5 Shift Differential Compensation**

A non-exempt employee required to work on graveyard or swing shift on a regular basis shall receive, in addition to his/her regular compensation, additional compensation (shift differential pay) based on a flat percentage, as noted below, of earned wages for the month, exclusive of overtime.

- 6.5% for swing shift
- 10.0% for graveyard shift

A non-exempt employee required to work on a rotating shift on a regular basis within a workweek shall receive, in addition to his/her regular compensation, additional compensation (shift differential pay) based on a flat 10% of earned wages for the month, exclusive of overtime.

## **5.6 Emergency Standby Compensation**

To provide for availability of qualified personnel in the event of emergency, certain employees may, from time to time, be designated by the Department Manager to be on call for emergency during normal off-duty hours. Such designated employees shall receive additional compensation in the amount of  $\frac{3}{4}$ -hour pay per standby shift. Such employees shall be able to report to work within 45 minutes, if called.

## **5.7 Callback Compensation**

A non-exempt employee who is called back to duty on off hours in an emergency situation shall receive a minimum of two hours callback overtime pay, which includes travel time to and from the District from the employee's residence.

## **5.8 Acting Pay**

Regular, full-time employees assigned to work in a higher classification on a temporary basis for more than four consecutive weeks due to the termination, promotion, or authorized long-term absence of an incumbent, shall be compensated for any hours worked in the higher classification, at 5% above regular compensation or to the bottom of the range of the higher classification or whichever is higher, providing:

- A. The Department Manager has determined that the duties and responsibilities of the vacant position are such that they cannot remain unassigned during

the absence of the incumbent and has received prior written approval of the General Manager;

- B. The temporary assignment is expected to continue for a minimum of four consecutive weeks and will not continue beyond six months;
- C. The assignment is for purposes other than training;
- D. The assigned employee is qualified to perform the work of the vacated position; and
- E. The assigned employee will assume all the duties and responsibilities of the vacated position.

If, during this temporary assignment, the employee becomes eligible for any scheduled salary increase in the employee's regular classification, such increase shall maintain the 5% differential. At the end of the temporary assignment, the employee shall return to his regular classification and salary with any merit or salary adjustment increases as appropriate.

### **5.9 Performance Appraisal**

To provide a fair evaluation of performance, employees will be appraised at three months and six months from date of hire or position change, or from the first of the month following the date of service or position change. Thereafter, performance will be appraised annually on the employee's anniversary date (date in position).

The purpose of the performance evaluation includes, but is not limited to, the following:

- A. Assess various performance factors such as work quality, timeliness, and other factors that are applicable to the position;
- B. Assess specific objectives accomplished or not accomplished;
- C. Define areas needing development or improvement;
- D. Serve as a guide for promotions, transfers, discipline, and other personnel actions;
- E. Establish short- and long-term performance goals and objectives; and
- F. Assist in determining salary adjustments within the salary ranges.

The results of the appraisal shall be discussed with, and signed by, the employee prior to such being made a part of the employee's personnel file. The employee is entitled to attach a response to the appraisal within ten working days, which will also be included in the personnel file.

### **5.10 Top of Range Merit Payment**

Employees whose salary falls at the top of their salary range and are no longer eligible for a base building merit increase, who receive an overall performance rating of 5- or greater on their annual performance review shall be paid a lump sum, non-base building merit payment of 3%.

Employees whose salary falls at the top of their salary range and are no longer eligible for a base building merit increase, who receive an overall performance rating of 4 or 4+ on their annual performance review shall be paid a lump sum, non-base building merit payment of 1.5%.

Employees who qualify for a base building merit increase as outlined in Section 5.1.1.3 but are not eligible for the full merit amount due to reaching the top of their salary range, are eligible to receive the remaining amount as a non-base building merit payment as stated above only if the total increase does not exceed the lump-sum merit percentage they would have qualified for as a top of range employee.

## **6. EMPLOYMENT STATUS**

### **6.1 Termination of Employment**

When an employee voluntarily resigns from the District, the employee's last day worked will be considered his/her last day as an active employee. All accrued, unused vacation hours will be paid out at the time of separation, as well as the appropriate percentage of accrued and unused sick hours (see Sick Leave Benefits policy, paragraph 7.1) and any accrued and unused holiday in lieu and comp time hours. Employees are not allowed to utilize vacation, sick, holiday in lieu or CTO hours to extend the last day of active employment with the District.

An employee who voluntarily terminates and is subsequently rehired shall receive no credit for the prior period of service. If an employee involuntarily or voluntarily terminates employment because he/she could not return to work at the end of an approved leave, and then is rehired within one year, the District will bridge the service date so that the employee may receive credit for previous service. Vesting and reinstatement of benefits will be in accordance with the provisions of the District's retirement plans.

### **6.2 Layoff/Reduction in Force/Recall**

Subject to General Manager approval, the Human Resources Director may lay off regular and probationary workers at any time based upon:

- A. Lack of work;
- B. Budgetary reasons;
- C. Elimination of programs; or
- D. Elimination of services.

At least two weeks written notice shall be given to any employee who is laid off. If less than two weeks' notice is provided, the employee will be paid for the difference between the date of layoff and two weeks.

At the sole discretion of the General Manager, a demotion or transfer to another department or classification may be made to prevent a layoff, provided the employee is qualified by education and/or experience and is capable of performing the duties of the classification. The Department Managers, in consultation with the Human Resources Director, and as approved by the General Manager, will affect the layoffs.

#### **6.2.1 Reduction in Force (RIF)**

When it becomes necessary to reduce the work force at OCWD, the General Manager shall designate the job classification and department in order to affect a reduction in the work force. Contract, temporary, part-time, seasonal, or probationary employees in the same job classification, as ones proposed to be reduced within the agency shall be laid off first. Although the General Manager may elect to do so, he/she is not required to allow laid-off employees to "bump"

employees in other classifications unless the employee has previously successfully held a position in another classification, in which case the laid-off employee would be considered for layoff, if any, from the previously held classification, along with others in that classification, in accordance with the "Order of Layoff" set forth below.

Probationary promotional employees who are laid off shall, if applicable, be returned to their former classification. Employees who accept lower positions or transfers in lieu of layoff shall be placed at the salary range of the new position.

### **6.2.2 Order of Layoff**

The order of layoff of regular employees within the same job classification shall be made in accordance with a system which favors retention of the more meritorious employees, based upon evaluation of the following factors, in the listed order of importance:

- A. The two most recent performance evaluation records as finalized and/or filed in the employee's personnel file, except when an employee has less than two years of service within the District. In that case, only one performance evaluation will be used;
- B. Documents of disciplinary actions during the preceding 24 months;
- C. Seniority (length of service in a career position)
  - 1. At the District; and
  - 2. In the classification; and
  - 3. In the department.

The General Manager may deviate from these criteria for good cause, including the desirability to maintain a department or work unit with adequate staffing to perform required service, and maintain employees in the classification or department who have demonstrated the ability to perform work available.

### **6.2.3 Seniority**

Seniority is determined from the day of employment in a District department as a regular employee, provided that any regular employee who as a result of promotion, transfer, or voluntary demotion, is hired to a regular position in another department, shall for purposes of layoff, carry seniority previously acquired over to the new department.

Seniority shall continue to accrue during periods of vacation, sick leave, layoff not exceeding two years, any authorized leave of absence of less than three months, or any call to military service for the duration of the call to duty. Seniority shall not accrue during any other break in continuous service, unless required by law.

### **6.2.4 Other Policies**

Any employee who receives an involuntary transfer (except for disciplinary transfers) shall have automatic "bumping rights" to the classification said employee was

involuntarily transferred from for up to six months from the effective date of the involuntary transfer in the event of layoff.

### **6.2.5 Recall List**

The name of every regular employee who is laid off, transferred, or demoted to a classification in the same department for longer than one pay period due to a Reduction in Force, shall be placed on the Recall List maintained by the Human Resources Director. Vacancies to be filled within a department shall be offered, first in order of performance, to individuals named on the Recall List who, at the time of the Reduction in Force, held a position in the same job classification within in the department as the vacancy to be filled.

Individual names may be removed from the Recall List by the Human Resources Director for any of the following reasons:

- A. The expiration of two years from the date of placement on the list.
- B. Reemployment with the District in a regular full-time position in a department other than that from which the employee was laid off.
- C. Failure to respond within fourteen calendar days of mailing of a certified letter regarding availability for employment.
- D. Failure to report to work within fourteen calendar days of mailing of a certified letter containing a notice of reinstatement to a position, absent mitigating circumstances.
- E. Request in writing to the Human Resources Director to be removed from the list.

### **6.2.6 Status on Reemployment**

A regular employee who has been laid off or terminates in lieu of reassignment and is reemployed in a regular position within two years from the date of his/her layoff or termination shall be entitled to:

- A. Restoration of seniority accrued prior to and during layoff.
- B. Credit for all service prior to layoff for the purpose of determining the rate of accrual of vacation leave.
- C. Placement in the salary range as if the employee had been on a leave of absence without pay if he/she is reinstated to the same job classification in the same department from which he/she was laid off or terminated.

### **6.2.7 Pre-Layoff and Post-Layoff Hearings**

In accordance with the decisions of *Levine v. City of Alameda*, 525 F.3d 903 (9<sup>th</sup> Cir. 2008) and *Clements v. Board of Trustees of the Airport Authority of Washoe County*, 69 F. 3d 321 (9<sup>th</sup> Cir. 1995), regular employees within the meaning of Section 3.4 who are subject to layoff or reduction in force, and who are not granted bumping, demotion or transfer rights, shall be entitled to a pre-layoff and post-layoff evidentiary hearing as set forth in Section 17.12.4.



### **6.3 Severance Pay**

It is the policy of the Orange County Water District that severance pay is granted to terminated employees under certain limited circumstances. The District will establish the terms and conditions for severance pay and will communicate such terms to the employee upon termination. The District retains the right to amend or terminate its severance pay plan at its sole discretion.

- A. The main purpose of severance pay is to provide economic assistance to certain terminated employees while they seek other employment.
- B. The Human Resources Department is responsible for administering the policy on severance pay and will handle any issues or complaints.
- C. Employees will normally only be considered eligible for severance pay if they have worked full-time or part-time for at least a year and are terminated because of:
  - 1. A permanent reduction in force (unless the employee refuses a transfer deemed suitable by the District);
  - 2. The elimination of the job or position;
  - 3. A demonstrated insufficient aptitude for continued employment by the District, not attributable to any willful cause or lack of effort; or
  - 4. Voluntary acceptance of a District-sponsored early retirement program.
- D. Employees will not normally be considered eligible for severance pay if their employment is terminated because of:
  - 1. An employee initiated voluntary resignation;
  - 2. Misconduct
  - 3. A normal retirement, employee-initiated early retirement, permanent disability, or death; or
  - 4. Merger with, or acquisition by, another organization, if employment is continued or reinstated without an extended break by the new organization.
- E. When severance pay is granted, eligible employees will normally receive one week's regular straight time pay for each year of continuous service. Unless otherwise provided, payment will be made in a lump sum at the time when final termination pay is rendered.

The General Manager has the discretion to grant severance to employees not covered by this policy.

### **6.4 Abandonment of Employment**

An employee who is absent, without authorized leave, for three or more consecutive workdays is deemed to have resigned his/her employment with the District. If the Department Manager, with the concurrence of the Director of Human Resources, determines that extenuating circumstances exist, the resignation may be rescinded, in which case the absence may be covered by leave, with or without pay, if so approved by the Director of Human Resources.

## **6.5 Promotion**

A promotion shall be the movement of an employee from one classification to another classification in a higher salary range. Such employee shall be placed on promotional probation for a period of six months. Retention of said employee in the promoted classification may be determined at any time during the probationary period.

If such employee fails his/her promotional probation, said employee shall not have the right to return to his/her former classification unless there is a vacant position in said former classification and there is approval of the General Manager. If such employee is returned to his/her former classification, said employee shall return to their original status in the former classification. If such employee is on promotional probationary status at the time the annual performance review would have been due in their prior position, and is moved back into their prior position, said employee shall be entitled to the performance review.

## **6.6 Reduction**

A reduction shall be the movement of an employee from one classification to another classification at a lower salary range for reasons other than discipline.

If an employee is reduced to an established position in a classification in a lower salary range, said employee shall be placed at a salary level within said reduced range closest to his/her current salary in the new range. In the event the employee's current salary exceeds the maximum salary of the new range, the General Manager shall make determination as to reduction of the employee's salary to the maximum salary of the new range. Said employee shall be placed on six months probationary status. Retention of said employee may be determined at any time during the probationary period.

## **6.7 Position Reclassification**

A position reclassification shall be the reclassification of a position from one salary range to another salary range.

If an employee is in a position which is reclassified to a higher salary range, said employee shall maintain his/her current salary rate unless his/her current salary rate is below the beginning salary of the new range, in which event said employee shall, at the discretion of the General Manager, be eligible to receive the beginning salary in the new range.

If an employee is in a position which is reclassified to a lower salary range, said employee shall be placed at a salary level within the lower range closest to his/her current salary. In the event the employee's current salary exceeds the maximum salary of the new range, the employee's current salary shall be maintained on a y-rated basis and shall not change during continuous regular service until the maximum of the new range exceeds the salary of the employee.

## **LEAVE PROVISIONS**

### **7.1 Sick Leave Benefits**

#### **7.1.1 Definition**

Sick leave is an insurance or protection provided by the District to be granted employees in circumstances of adversity to promote the health and welfare of the individual employee. It is not an earned right to take time off from work. Employees should not automatically assume that absenteeism is permissible merely because they have sufficient sick leave benefits to cover all or a portion of their time off. The District may determine that absenteeism is excessive if, based on all the facts and circumstances, it is found disruptive to the District, co-workers, persons contracting with the District, or producers. Sick leave is defined as the absence from duty of an employee because of a bona fide illness, injury, or pregnancy, or to attend to the illness or injury of a family member as hereinafter defined.

#### **7.1.2 Method**

Every regular, full-time employee of the District shall accrue eight hours of sick leave per month, with pay, which is equivalent to 3.69 hours per biweekly pay period. Every regular, part-time employee of the District shall accrue four hours of sick leave per month, with pay, which is equivalent to 1.84 hours per biweekly pay period. The General Manager may grant up to three days of advance sick leave if the employee does not have enough accrued leave to cover an absence due to illness.

A regular full-time or part-time employee shall not accrue sick leave credit during any pay period in which he/she is absent without pay for the entire pay period. In the event an employee is required to work part-time by direction of his/her physician, sick leave credit shall be prorated, except that sick leave shall continue to accrue if an employee is absent due to an injury arising out of, or in the course of, his/her employment and is entitled to Workers' Compensation benefits.

#### **OCWD -Hired Temporary Employees and Student Intern Provision**

Every OCWD-hired temporary employee or intern who is expected to work 30 or more days per year will qualify for twenty-four hours of paid sick leave in each calendar year of employment. Each employee shall be paid for the number of hours in his or her regularly scheduled workday. (e.g. If a temporary employee or intern is scheduled to work a 4-hour day, he or she shall be entitled to 4 hours of paid sick leave for the day up to a total of twenty-four hours of paid sick leave per calendar year). All employees shall be eligible to use this leave beginning on the first day of employment. If an employee does not use all the sick leave available in any given year, the leave shall not carry over to the following year.

### **7.1.3 Permissible Uses**

Sick leave may be applied only to:

- A. Absence due to illness, injury, or pregnancy of an employee.
- B. Absence due to diagnosis, care, or treatment of an existing condition of, or preventative care for, an employee.
- C. Absence of an employee who is a victim of domestic violence, sexual assault, or stalking to obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the employee or his or her child; or alternatively, to obtain services from a domestic violence shelter, program, or rape crisis center, to obtain psychological counseling, or to participate in safety planning.
- D. Absence due to medical and dental office appointments of an employee's family member (e.g., employee's child, stepchild, parent, stepparent, or person who stood in loco parentis when the employee was a minor child, spouse, registered domestic partner, grandparent, grandchild, sibling, or stepsibling).
- E. Absence to attend an illness of a family member (e.g., employee's child, stepchild, parent, stepparent, or a person who stood in loco parentis when the employee was a minor child, spouse, registered domestic partner, grandparent, grandchild, sibling or stepsibling.)
- F. Leave of absence as approved per the leave policy (for regular employees) (see Leave of Absence policy, paragraphs 7.2 and 7.3).

### **7.1.4 General Provisions**

To qualify for sick leave benefits, the District must be notified at or in advance of the time the employee is scheduled to report for duty, except Operations personnel, who must notify the District one hour in advance of the time they are scheduled to report for duty.

Minimum charge to the non-exempt employee's sick leave account shall be fifteen (15) minutes. Exempt employees shall not be charged for less than one day of sick leave.

The Director of Human Resources shall be responsible for control of abuse of the sick leave privilege. The employee may be required, at any time, to furnish a certificate issued by a licensed physician or nurse, or other satisfactory evidence of illness; however, for absences of five working days or more, a request for leave and/or a medical statement in prescribed forms, stating expected date of return, must be submitted to Human Resources. Upon return to work, a written doctor's release must be submitted to Human Resources.

### **7.1.5 Sick Leave Benefit Payout Provisions**

Upon an employee's retirement (at normal retirement date), death, or termination, unused sick leave shall be paid to said employee, or his/her designated beneficiary in the event of death, on the following basis:

<b>Length of Service</b>	<b>Percent of Unused Sick Leave Paid</b>
0-6 months	0%
6 months-4 years	10%
5-9 years	20%
10-14 years	30%
15-19 years	40%
20 or more years	50%

There is no payout of unused sick leave hours for OCWD temporary employees or interns at the time of separation of employment, regardless of whether the separation results from termination, resignations, retirement, or death. If, however, an employee separates from OCWD and is rehired by OCWD within one year from the date of separation, previously accrued and unused paid sick days shall be reinstated.

### **7.2 Leave of Absence Policy**

It is the policy of the District to grant employees extended leaves of absence under certain circumstances. Unless specifically provided otherwise, employees will not receive compensation during a leave of absence.

Upon request on prescribed forms, approved by the Human Resources Director, full- or part-, time employees, including probationary, may be eligible for a leave of absence where required by State and Federal law.

### **7.3 Permissible Leaves**

#### **7.3.1 Family and Medical Leave**

##### **7.3.1.1 Statement of Policy**

Under the Federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA), eligible employees may take up to 12 weeks of unpaid Family and Medical Leave within a rolling 12-month period (measured backward from the date of the commencement of any Family and Medical Leave) and be restored to the same or a comparable position upon the employee's return from leave provided: (1) the employee has worked for the District for a total of at least 12 months at any time prior to the commencement of CFRA leave, and (2) for at least 1,250 hours in the past 12 months.

##### **7.3.1.2 Reasons for Leave**

You may take Family and Medical Leave for any of the following reasons: (1) the birth of a child and to care for such child; (2) the placement of a child with you for

adoption or foster care and to care for the newly-placed child; (3) to care for a spouse, registered domestic partner, child, or parent (“covered relation”) with a serious health condition;(under the CFRA, leave may also be taken to care for grandparents, grandchildren, or siblings with a serious health condition) or (4) because of your own serious health condition that renders you unable to perform an essential function of your position. Leave because of reasons: “1” or “2” must be completed within the 12-month period beginning on the date of birth, adoption, or placement. In addition, spouses who are both employed by the District who request leave because of reasons “1” or “2” only may take a combined total of 12 weeks leave during any 12-month period.

#### **7.3.1.3 Notice of Leave**

If your need for Family and Medical Leave is foreseeable, you must give the District at least 30 days’ prior notice of the need for leave, in writing using the District’s Request for Leave of Absence Form along with any other additional forms required. If this is not possible, you must at least give notice as soon as practicable (generally either the same day or the next business day of learning of your leave). Failure to provide such notice may be grounds for delay of leave. Additionally, if you are planning a medical treatment, you must consult with the District first regarding the date of such treatment. Where the need for leave is not foreseeable, you should notify the District within the time prescribed by the District’s usual and customary notice practices.

#### **7.3.1.4 Medical Certification and Recertification**

If you are requesting a leave because of your own or a covered relation’s serious health condition, you must provide appropriate medical certification from the relevant health care provider within 15 calendar days after you request leave, if practicable. You must obtain medical certification forms from Human Resources. If you provide at least 30 days’ notice, you should provide the medical certification before leave begins. Failure to timely provide a complete and clear medical certification may be grounds for delay or denial of leave.

The District, at its expense, may require an examination by a second health care provider designated by the District, if it has a good faith, objective reason to doubt the medical certification you initially provide for your own serious health condition. If the second health care provider’s opinion conflicts with the original medical certification, the District, at its expense, may, but is not required to, retain a third, mutually agreeable, health care provider to conduct an examination and provide a final and binding opinion.

The District may require recertification under certain circumstances, such as when a current certification expires, upon request for an extension of the leave, after the expiration of the anticipated minimum duration of the serious health condition, if circumstances have changed, or at thirty (30) day intervals for certain conditions.

Failure to timely provide (within 15 days if practicable) a complete and clear medical certification may be grounds for delay or denial of leave.

#### **7.3.1.5 Reporting While on Leave**

If you take leave because of your own serious health condition or to care for a covered family relation, you must contact Human Resources as directed regarding the status of the condition and your intention to return to work. In addition, you must give reasonable notice (within two (2) business days if feasible) if the dates of leave change or are extended.

#### **7.3.1.6 Leave is Unpaid**

Family and Medical Leave is unpaid leave, although you may be eligible for short and long-term disability benefits and/or workers' compensation benefits under those insurance plans. See Human Resources for benefit and eligibility information. You must use accrued sick leave hours prior to receiving benefits under the short and long-term benefit programs and must also use all accrued and used paid leave concurrently with the use of Family Care and Medical Leave and California Family Rights Act Leave.

#### **7.3.1.7 Medical and Other Benefits**

For the first 12 weeks of an approved Family and Medical Leave, the District will maintain your health benefits as if you continued to be actively employed. If paid leave is substituted for unpaid Family and Medical Leave, the District will deduct your portion of the health plan premiums as a regular payroll deduction. If your leave is unpaid, you must pay your portion of the premiums as directed by the District. Your health insurance coverage will cease if your premium payment is more than 30 days late. If you elect not to return to work at the end of your approved Family and Medical Leave, you will be required to reimburse the District any unpaid premiums for the health insurance plans.

#### **7.3.1.8 Intermittent and Reduced Schedule Leave**

Leave because of a serious health condition, including pregnancy-related disabilities, may be taken intermittently (in separate blocks of time due to a single health condition) or on a reduced-leave schedule (reducing the usual number of hours you work per workweek or workday) if there is a medical need for the leave, and if that need can be best accommodated through an intermittent or reduced leave schedule. Employees also may be eligible for certain intermittent leave for birth or placement of child. In addition, while you are on an intermittent or reduced leave schedule the District may temporarily transfer you to an available alternative position that better accommodates your recurring leave and has equivalent pay and benefits.

If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as to not disrupt unduly the employer's operations.

If intermittent “bonding leave” is requested, employees may request intermittent leave in increments of two weeks or more. Employees will be allowed to request two exceptions to the two week minimum rule and request leave period under two weeks of time. All requests are subject to approval and the needs of the department.

For salaried (exempt) employees, if leave is unpaid, the district may reduce your salary based on the amount of time actually worked.

#### **7.3.1.9 Returning from Leave**

If you take leave because of your own serious health condition (except if you are taking intermittent leave), you must provide the District with a Certification from your doctor indicating any limitations or restrictions on your ability to perform the essential functions of your position. Under most circumstances, an employee who returns from a Family and Medical Leave will be reinstated to his or her original job or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions. However, you have no greater right to reinstatement than if you had been continuously employed rather than on leave.

#### **7.3.1.10 Extended Leave for Serious Health Condition**

Leave taken because of your own serious health condition may be extended upon: (1) written request to the District; (2) proof that the serious health condition has continued; and (3) approval by the District. If you do not return to work on the originally scheduled return date or request in advance an extension of the agreed upon leave with appropriate documentation, you may be deemed to have voluntarily resigned your employment with the District. If you request an extension of your leave beyond the initial 12-week period, you must submit medical certification of your continued serious health condition in advance for consideration and approval. Reinstatement is not guaranteed on an extended leave and will depend on the District’s needs.

#### **7.3.1.11 No Work While on Leave**

Taking another job while on Family and Medical Leave or any other authorized leave of absence may be considered a voluntary resignation of your employment with the District.

#### **7.3.1.12 Definitions**

For purposes of this policy, the following definitions apply:

“Spouse” means a partner in marriage as defined in California family Code sections 300 or a registered domestic partner”, within the meaning of Family Code sections 297 through 297.5. “Spouse” includes same-sex partners in marriage. “Parent” includes biological, foster or adoptive parents, step-parents, or legal guardians or other persons who stood in loco parentis to the employee when the employee was a child but does not include parents-in-law.



“Child” includes biological, adopted, foster children, step-children, legal wards, and other persons for whom the employee acts in the capacity of a parent and who is either under 18 years of age or over 18 years of age but incapable of caring for himself or herself because of a physical or mental disability at the time the Family and Medical Leave is to commence.

“Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment, including, but not limited to, treatment for substance abuse:

- (1) “Inpatient care” means a stay in hospital, hospice, or residential care facility, any subsequent treatment in connection with such inpatient care, or any period of incapacity. A person is considered an “inpatient” when a health care facility formally admits him or her to the facility with the expectation that he or she will remain at least overnight and occupy a bed, even if it later develops that such person can be discharged or transferred to another facility and does not actually remain overnight.
- (2) “Incapacity” means the inability to work, attend school, or perform other regularly daily activities due to a serious health condition, its treatment, or the recovery it requires.
- (3) “Continuing treatment means ongoing medical treatment or supervision by a health care provider.

A serious health condition may involve one or more of the following:

- (a) Hospital Care: Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care. A person is considered an “inpatient” when a health care facility formally admits him or her to the facility even if it later develops that such person can be discharged or transferred to another facility and does not actually remain overnight.
- (b) Absence Plus Treatment: A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition) that also involves: (1) treatment two or more times by a health care provider, by a nurse or physician’s assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or (2) treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
- (c) Pregnancy: Only under the FMLA, any period of incapacity because of pregnancy or prenatal care (even without treatment by a health care provider during the absence and even if the absence is less than three (3) days (e.g., morning sickness)).

- (d) Chronic Conditions Requiring Treatment: A chronic condition which (1) requires periodic visits for treatment by a health care provider, or by a nurse under direct supervision of a health care provider; (2) continues over an extended period of time; and (3) may cause episodic rather than a continuing period of incapacity (e.g., asthma attack, migraine headaches, etc.); or
- (4) Permanent/Long-term Conditions Requiring Supervision: Any period of incapacity which is permanent or longer-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, or the terminal stages of a disease.) The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
- (5) Multiple Treatments: Any period of absence to receive multiple treatments (including any period of recovery therefrom) by health care providers or provider of health care services (under order or referral of a health care provider) either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three (3) consecutive full calendar days if untreated (e.g., cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis)).

"Health care provider" means (1) an MD or DO licensed by the state (or country) in which he or she practices; (2) podiatrist, dentists, clinical psychologists, optometrists, or chiropractors (limited treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice under the state law; (3) nurse practitioners, nurse-midwives, clinical social workers and physician assistants authorized under state law; (4) Christian Science practitioners; (5) a health care provider who practices in a foreign country in accordance with the laws of that country and; (6) any other health care provider from whom the employer or the employee's group health plan benefits manager will accept certification of the existence of a serious health condition to a substantiate a claim for benefits.

"Needed to care for" a covered relation encompasses: (1) physical and psychological care of a child, spouse, domestic partner, or parent with a serious health condition; and (2) where the employee is needed to fill in for others providing care or to arrange for third party care of a child, spouse, domestic partner, or parent who is receiving inpatient or home care (the employee need not be the only individual or family member available to provide care.)

The phrase "unable to perform the functions of his or her job" means an employee is (1) unable to work at all; or (2) unable to perform any one of the essential functions of his or her position at the time notice is given or leave commenced, whichever is

earlier. The term “essential functions” is borrowed from the Americans with Disabilities Act (ADA) and state disability discrimination not to include the marginal functions of the position.

#### **7.3.1.13 Service Member Family and Medical Leave**

The federal Family and Medical Leave Act provides eligible employees time off from work for a covered family member’s service in the Armed Forces (“Service member FMLA”).

This policy supplements our current “Family and Medical Leave” policy and provides general notice of your rights to Service Member FMLA. Except as mentioned below, your rights and obligations with respect to Service Member FMLA are governed by our existing “Family and Medical Leave” policy to the extent they are applicable.

#### **7.3.1.14 Leave Entitlement**

Service Member FMLA provides eligible employees unpaid leave for either of the following reasons:

- (1) **Qualifying Exigency:** A “qualifying exigency” arising out of a spouse, parent or child’s covered active duty or call to duty in support of a contingency operation as a member of the reserve components of the Army National Guard of the United States, Army Reserve, navy Reserve, Marine Corps Reserve, Air national Guard of the United States, Air Force Reserve, Coast Guard Reserve, or a retired member of the Regular Armed Forces or Reserve. An eligible employee may take FMLA leave for any of the following “qualifying exigencies:” (a) short-notice deployment (fewer than seven (7) days’ notice), (b) military events and related activities, (c) childcare and school activities, (d) financial and legal arrangements, (e) counseling, (f) rest and recuperation, (g) post-deployment activities, (h) care for a military member’s parent who is incapable of self-care when care is necessitated by the member’s covered active duty, and (i) other additional activities to address events that arise out of the covered military member’s active duty or call to active duty. Please consult with Human Resources for additional information about what qualifies under this section.
- (2) **To Care for a Covered Service Member:** To care for a spouse, parent, child, next of kin, or covered veteran who has suffered an injury or illness in the line of duty while on active duty (including being on the temporary disability retired list) or injuries or illnesses that existed before the beginning of the member’s active duty and were aggravated by service in the line of duty on active duty in the line of duty on active duty in the Armed Forces, including the National Guard or Reserves, provided that such injury or illness renders the family member medically unfit to perform duties of the member’s office, grade, rank or rating.

#### **7.3.1.15 Duration of Service Member FMLA**

When leave is due to “qualifying exigency,” an eligible employee may take up to 12 workweeks of leave during any 12-month period as defined in the Family and Medical Leave policy. However, unless another covered reason applies, leave because of “short-notice” deployment may not exceed seven (7) calendar days, beginning on the date a covered military member is notified of an impending call or order to active duty in support of a contingency operation and leave because of Rest and Recuperation of a covered military member may not exceed fifteen (15) calendar days.

When leave is to care for an injured or ill service member, an eligible employee may take up to 26 weeks of leave during a single 12-month period to care for each injured or ill service member and/or injury or illness. The 12-month period begins on the first day of leave. Leave to care for an injured or ill service member, when combined with other Family and Medical-qualifying leave, may not exceed 26 weeks in a single 12-month period. If an employee is eligible for leave to care for more than one service member or because of more than one injury or illness to the same service member within the same single 12-month period, the employee is limited to a total of 26 workweeks during that 12-month period. Any portion of the 26 workweeks of leave remaining at the end of the single 12-month period is forfeited.

If you or your spouse both work for the District, your combined leave can be limited to 26 weeks on a 12-month period.

Service member FMLA runs concurrent with other leave entitlements provided under federal, state and local law. If leave to care for a covered service member is taken concurrently with leave for another FMLA-qualifying reason, the leave will first be designated as service member leave.

#### **7.3.1.16 Notice of Need for Service Member FMLA**

You Must provide as much advance notice as practicable of your need for Service Member FMLA. If the leave is for the planned medical treatment of a covered service member, you must provide 30 days’ advance notice, unless notice is not practicable. If 30 days’ notice is not practicable, you must provide notice as soon as practicable.

Certification: If you are requesting leave for a “qualifying exigency,” the District will require you to provide a copy of the covered service member’s active duty orders or other documentation verifying the covered service member is on active duty or has been called to active duty to support a contingency operation, and the dates of active service. The District may also require you to provide a certification verifying eligibility for leave.

If you are requesting leave to care for a covered service member, the District will require you to provide a medical certification from an authorized health care provider verifying certain information regarding the covered service member and his or her injury or illness. For purposes of this certification, the term “health care provider”

includes: (a) a United States Department of Defense health care provider; (b) a United States Department of Veterans Affairs health care provider; (c) a United States Department of Defense TRICARE network authorized private health care provider; or (d) a United States Department of Defense non-network TRICARE authorized health care provider.

Verification: If you request leave because of a “qualifying exigency,” the District may contact the Department of Defense to verify the covered service member is on or has been called to duty. Additionally, if you are taking leave to meet with a third party, the District may contact the third party to verify the meeting and its purpose.

### **7.3.2 Pregnancy Leave of Absence (PDL)**

Pregnancy leave is available to an employee who is disabled by pregnancy, which means that, in the opinion of the employee’s health care provider, the employee’s pregnancy or related medical conditions including morning sickness, prenatal care, postnatal care, postpartum depression, gestational diabetes, preeclampsia, mastitis, or termination of pregnancy and recovery therefrom and has rendered her unable to perform any one or more of the essential functions of her job. PDL leave runs concurrent with leave allowed under the FMLA.

#### **7.3.2.1 Medical Certification**

All requests must be made in writing. The written request should be made by completing and submitting District’s Request for Leave of Absence for and must be supported by a written certification from the employee’s health care provider. Please see Human Resources for the most current forms required.

#### **7.3.2.2 Duration of Pregnancy Leave**

Pregnancy leaves will be granted for a maximum total of 693 hours of leave. Leave taken intermittently will be aggregated and counted toward the 693 hours maximum.

#### **7.3.2.3 Pay/Benefits During Pregnancy Leave of Absence**

Pregnancy leaves are considered unpaid. Employees will be required to utilize all accrued sick leave benefits. After all sick leave benefits have been exhausted, the employee may elect to utilize any accrued CTO, In-lieu, and vacation counted towards the maximum allowed leave time under the statute.

Group insurance benefits will be continued while an employee is on a pregnancy leave of absence. During such period, the District will continue to contribute to its portion of the premiums. The employee’s premiums contribution must continue to be paid by the employee in order for coverage to remain in effect.

#### **7.3.2.4 Return from Pregnancy Leave of Absence**

Provisions for returning to work are the same as for family/medical leaves of absence (see paragraph 7.3.1.9).

### **7.3.3 Personal Leave of Absence**

Employees may be granted an unpaid leave of absence to attend to personal matters in cases in which the General Manager determines that an extended period of time away from the job will be the best interest of the employee and the District. Employees will be granted a maximum of thirty days of personal leave within a twelve-month period, as determined by the General Manager. Employees will be required to utilize their accrued vacation, in-lieu, and CTO hours while on a personal leave of absence. Sick leave will not be allowed unless this leave relates to an existing medical leave.

### **7.3.4 Jury Duty**

Any full-time, including probationary, employee who is called for jury duty shall, upon request on prescribed forms approved by Human Resources, be entitled to his/her regular pay for those hours of absence due to performance of the jury duty for up to a period of 22 working days, provided that his/her fees for such service, exclusive of mileage, are submitted to the District for deposit in the General Fund of the District.

An employee serving jury duty must obtain an attendance slip from the court to be submitted to Human Resources with his/her Request for Leave Form in order to be eligible for regular pay for those hours of absence due to jury duty.

### **7.3.5 Witness Leave**

Any full-time, including probationary, employee who is required to be absent from work by a subpoena properly issued by a court, agency, or commission legally empowered to subpoena witnesses, which subpoena compels his/her presence as a witness, except in a matter wherein he/she is named as a defendant or plaintiff or as an expert witness, shall, upon request on prescribed forms approved by the Director of Human Resources, be entitled the time necessary to comply with such subpoena, provided any fees received for such service, exclusive of mileage, are submitted to the District for deposit in the General Fund of the District.

An employee so subpoenaed must submit a copy of the subpoena with his or her timesheet in order to be eligible for pay for such absence. To be entitled to receive regular pay for such witness leave, the employee must report for work at the District for time not actually retained on witness service of one hour or more prior to and/or upon completion of each day's service, exclusive of travel time.

### **7.3.6 Military Leave**

A request for military leave shall be made upon prescribed forms approved by the General Manager and shall state the date when it is desired to begin the leave of absence and the date of anticipated return. A copy of orders requiring such military service shall be submitted with the request.

Provisions of the Military and Veterans Code of the State of California, Section 395-395.5 shall govern military leave. In general, current law provides that an employee having one year or more service with a public entity is entitled to military leave with pay, not exceeding thirty days per year, if the employee is engaged in military duty ordered for purposes of active military training or encampment. An employee who is required to attend scheduled service drill periods or perform other inactive duty reserve obligations is entitled to military leave without pay, not exceeding 180 calendar days per year, although the employee may, at his/her option, elect to use vacation time to attend. In the event of any conflict between this policy and the Military and Veterans Code, and the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U. S.C. 4301 et. Seq (“USERRA”), the Code and USERRA shall prevail.

The District shall allow their employees to use any accrued vacation, CTO and In-Lieu leave time during any type of military leave covered by USERRA. Once an employee begins a military leave of absence (called to active duty), he or she shall continue receiving benefits under the employer’s health care plan. If the period of service and thus absence, is less than 31 days, the employee shall only be charged the usual employee contribution amount for the coverage, if any. If the time period of service goes beyond 31 days, the employee may be charged no more than 102% of the premium cost associated with the coverage, if any. The employee shall be given an opportunity to have this or her healthcare coverage extended for up to 24 months from the date of military departure. Coverage after the initial 31 days is offered through COBRA.

There are multiple provisions of the USERRA and the state code that go beyond the space permitted in the Personnel Manual. Accordingly, for those employees who are called for military service, please contact the District’s Human Resources Department for a more comprehensive description of the employee and employer obligations and reinstatement rights.

### **7.3.7 Bereavement Leave**

Upon request, and with the approval of the Director of Human Resources, full-time, including probationary, employees shall receive necessary time off with pay, not to exceed three days, or five days if employee must travel beyond 500 miles, in any one instance to arrange for or attend a funeral of a member of their immediate family.

For purposes of this section, immediate family shall mean father, father-in-law, mother, mother-in-law, brother, sister, wife, husband, child, grandchild, grandparent, former or current legal guardian, or any family member with whom the employee resides.

#### **7.4 General Leave Provisions**

The District will also provide those mandatory leaves specified in the Labor Code. Sick leave credit and vacation credit will not accrue during any pay period an employee is absent without pay for the entire pay period.

Employees who are unable to report for work because of arrest and incarceration will be placed on a special personal leave of absence and must use any accrued, unused vacation hours, any accrued and unused in-lieu hours, and any accrued and unused CTO hours available. If the employee is unable to secure bail, the leave of absence will continue until final disposition of the charges. If the employee is freed on bail, a decision whether to allow the resumption of active employment pending disposition of the charges will be made by the General Manager. The General Manager will determine whether reinstatement would be consistent with the District's needs and requirements.

An approved leave of absence may be extended upon request by the employee and approval by the Department Manager and Director of Human Resources. Such extension request must be made two weeks prior to the expiration for the original leave.

#### **7.5 Return to Work (RTW) Medical Evaluation Policy**

An employee who has been absent from work due to an injury, illness, or disability or an extended leave of absence may be subject to a Return to Work (RTW) medical evaluation. RTW medical evaluations are conducted to determine whether an employee has a medical condition that impacts the employee's ability to perform on the job without any substantial risk of injury to the employee or others.

The degree of complexity of the RTW medical examination may differ depending upon the circumstances of the leave, changes in job demands, and/or inquiries with or between appropriate management staff and/or the employee's physician. The medical criteria for making RTW determinations shall be the same criteria as applied to pre-placement medical evaluations.



## **8. WORK-RELATED INJURY OR ILLNESS**

Whenever an employee sustains an injury or disability arising out of, and in the course of, District employment and required medical care, the employee shall obtain treatment according to the provisions of the California Labor Code, Section 4600 et seq., and shall receive compensation for hours not worked while obtaining such medical care. Employees are required to immediately report a work-related injury/incident to their supervisor.

Whenever an employee is completed by direction of his/her physician to be absent from duty on account of such injury or disability, such employee shall be placed on a medical leave of absence under the Family Medical Leave Act and California Family Rights Act (FMLA/CFRA). The employee shall receive full compensation for the first three calendar days following the day of the injury. Thereafter, the employee may elect to apply pro-rated sick leave, vacation, in-lieu, or CTO if sick leave is exhausted, to such absence to receive compensation therefore in an amount equal to the difference between the compensation to which he is entitled under the Workers' Compensation Act and his/her regular pay, not to exceed the amount of accrued leave. An employee who is receiving Workers' Compensation shall continue to accrue sick leave and vacation.

Workers' Compensation benefits begin with the fourth full consecutive calendar day of missed work; however, if the absence continues beyond fourteen days, Workers' Compensation will then pay the applicable benefits for the first three days of missed work. When this occurs, the employee will be docked for the first three days for the District previously paid him in an amount equal to the Workers' Compensation benefits received.

An employee who is on a medical leave of absence for more than thirty days and who was covered by disability insurance when the work-related injury or illness occurred, may be eligible for disability benefits. Compensation to which an employee is entitled from Workers' Compensation and disability shall not exceed an employee's regular pay.

Supervisors are required to complete prescribed reporting forms whenever an employee is injured and/or placed on a medical leave.

### **8.1 Return to Work (RTW) From Industrial Injury or Illness**

The decision to return an employee to work or place an employee back on the job, with or without modified work, shall be made by the District, independent of any decision made in the Workers' Compensation process. Generally,

- A. If there is no permanent disability, no work restrictions, and the absence has not been longer than thirty days, the employee shall be returned to work.

- B. If there is no permanent disability but temporary work restrictions, or there has been an absence of thirty days or more, a review of the employee's medical records from the Workers' Compensation case and RTW medical evaluation may be conducted. An employee shall be returned to work if the work restrictions are compatible with job demands or modified job demands, if available.
- C. If there is a permanent disability, placement of the employee in the position last held by the employee will be considered following an RTW medical evaluation.

The employee must obtain a release to work or be properly discharged from the medical provider utilized by the District prior to returning to his/her job. If it is determined that the job demands of the position held by the employee are not compatible with the employee's restrictions and the employee is willing to return to work, placement in an alternative position, if available, will be considered. The employee shall be re-classified as "medically disqualified" and placed on unpaid leave while alternative positions are being considered. However, the employee may elect to use accrued leave hours, such as vacation, to receive compensation. Placement of an employee in an alternate position requires a pre-placement medical evaluation for the alternative job.

If it is determined that the job demands of the position last held by the employee are not compatible with the employee's restrictions and there is not an alternative position, or the employee's restrictions are not compatible with an alternative position, or the employee is not willing to return to work, the employee shall be re-classified as "medically disqualified." The employee shall then be retired for disability or be terminated from employment due to medical disqualification.

## 9. VACATION

### 9.1 Definitions

Every full-time employee of the District shall be entitled to vacation in accordance with the following schedule. No probationary employee shall earn any vacation benefits. Temporary employees are not entitled to any vacation benefits.

Length of Service	Annual Vacation Hours
Less than 5 years	108
5-9 years	132
10-14 years	156
15-19 years	180
20 or more years	204

Every part-time regular employee of the District shall be entitled to vacation in accordance with the following schedule:

Length of Service	Annual Vacation Hours
Less than 5 years	54
5-9 years	66
10-14 years	78
15-19 years	90
20 or more years	102

### 9.2 Method of Accrual

During the probationary period, vacation benefits will accrue after the probation period has been passed. Full-time employees shall earn approximately 54 vacation hours upon the successful completion of the probationary period, and shall thereafter accrue hours based upon years of service, as follows:

Length of Service	Biweekly Accrual
Less than 5 years	4.16 hours
5-9 years	5.08 hours
10-14 years	6.00 hours
15-19 years	6.93 hours
20 or more years	7.85 hours

Every eligible, part-time employee of the District shall, upon the first day following successful completion of the probationary period, be entitled to approximately 27 hours of vacation, and shall thereafter accrue hours based upon years of service, as follows:

Length of Service	Biweekly Accrual
Less than 5 years	2.08 hours
5-9 years	2.54 hours
10-14 years	3.00 hours
15-19 years	3.46 hours
20 or more years	3.92 hours

### 9.3 Accrual During Absences

Absence because of injury or sickness which is covered by accumulated sick leave shall not affect the accrual of vacation described under “Method of Accrual of Vacation” above. Vacation credit will not accrue during any period an employee is absent without pay for the entire pay period.

### 9.4 Carryover of Accrued Vacation

The maximum total accumulated vacation for any employee at any one time shall not exceed the following schedule:

Length of Service	Full-time Employee Maximum Vacation Carryover	Part-time Employee Maximum Vacation Carryover
After 1 year	148 hours	74 hours
After 5 years	172 hours	86 hours
After 10 years	196 hours	98 hours
After 15 years	220 hours	110 hours
After 20 years	244 hours	122 hours

Employees shall be compensated for any unused accrued vacation in excess of the maximum allowable carryover as of the end of each fiscal year, unless accumulation of vacation leave in excess of the maximum allowed by any employee is necessary for the proper conduct of the District and is approved in writing by the Human Resources Director.

### 9.5 Effect of Holidays

When an approved holiday falls within a vacation period, an employee except shift employees on vacation shall be entitled to the holiday and will not be required to use vacation hours for that day.

### 9.6 Timing of Vacation

The time at which an employee shall take vacation is subject to the needs of the District. To qualify for vacation, pay, the employee must obtain prior approval from the employee’s supervisor and Department Manager. Due regard for the wishes of the employee shall be considered in approving vacation leave. It is the policy of the District to grant employees vacation in order to provide them a break in their regular work schedule; and in administering the vacation leave provisions, the supervisor shall be guided by this stated purpose.

### **9.7 Minimum Charge to Vacation**

Minimum charge to the employee's vacation account shall be in fifteen (15) minute increments.

### **9.8 Payment for Unused Vacation Upon Termination**

Eligible employees terminating employment with the District shall be compensated for unused earned vacation hours. When separation is caused by death of an employee, payment for accrued vacation time shall be made to said employee's designated beneficiary.

## **10. HOLIDAYS**

### **10.1 Designation**

All full-time, including probationary employees, other than shift employees, shall observe the following paid holidays. To be entitled for a paid holiday, an employee must be entitled to full pay for the scheduled working day both before and after said paid holiday. Part-time employees are entitled to holiday benefits (equal to their total number of normal working hours per day) if the holiday falls on the employee's normal workday. Temporary employees are not entitled to holiday benefits.

- New Year's Day (January 1)
- President's Day (third Monday in February)
- Memorial Day (last Monday in May)
- Independence Day (July 4)
- Labor Day (first Monday in September)
- Veteran's Day (November 11)
- Thanksgiving Day (fourth Thursday in November)
- The day after Thanksgiving
- Christmas Eve (December 24)
- Christmas Day (December 25)
- One floating holiday to be designated by the employee each year.

The General Manager may elect to maintain a minimum staff on any holiday.

### **10.2 Holiday on Weekend or Scheduled day Off Per Modified Workweek Schedule**

For all eligible employees, the following shall apply: When a paid holiday falls on Sunday, the following Monday shall be deemed the paid holiday. When a paid holiday falls on a Saturday, the previous Friday shall be deemed the paid holiday. When a paid holiday falls on an employee's scheduled day off per the modified workweek schedule, the employee will receive eight hours of holiday in-lieu accrual:

### **10.3 Compensation for Holidays Worked**

#### **10.3.1 Other Than Shift Employees**

Any non-exempt employee, other than a shift employee, who is requested to work on a paid holiday, shall receive overtime credit or compensation upon the basis as described under "Compensation for Overtime."

#### **10.3.2 Holiday Compensation – Operations Shift Employees**

Shift employees shall receive "holiday compensation" shall, upon supervisory approval, have the option of receiving, on a biweekly basis, cash compensation equivalent to 12.375 hours per month or compensatory time (CTO) credit at 8.25 hours per month; however, the maximum total accrued CTO hours per shift employee shall not exceed eighty (80) hours. Such election must be indicated on each timesheet.

Shift employees shall not be entitled to “holiday compensation” for any pay period in which they are absent without pay for more than three full working days.

## **11. RETIREMENT PROGRAM**

### **11.1 Social Security and Medicare**

The District and its employees do not participate in Social Security subject to the following exceptions. Participation in the Medicare portion of the Social Security is required for all employees hired after March 31, 1986. Effective July 1, 1991, participation in Social Security is required for employees such as part-time and temporary personnel, who are not eligible for the District's Retirement Plans. Non-participation in Social Security may affect your Social Security retirement and disability benefits. Please check with your local Social Security Administration office to find out how this may apply to your benefits.

### **11.2 Retirement Plan**

The District provides a retirement plan referred to as the Money Purchase Plan. The provisions of the plan are detailed in a Plan Document and Summary Plan Description.

### **11.3 457(b) Deferred Compensation Plan**

A 457(b) Deferred Compensation Plan has been adopted and implemented for District employees as a means of augmenting the District's retirement plan and increasing retirement benefits. Contributions are on a voluntary basis. Provisions of this plan are explained in detail in the Orange County Water District Employees Deferred Compensation Plan, copies of which may be obtained in Human Resources.

#### **11.3.1 Employer Matching Contribution**

The District will make a matching contribution to each's employee's voluntary contribution up to a maximum of \$75 per pay period (\$1,950 per calendar year) effective July 1, 2021. This matching contribution will sunset effective June 30, 2026.



## **12. INSURANCE PROGRAMS**

### **12.1 Benefit Review**

The Board of Directors shall periodically review benefits and, based on this review, may revise the District's benefits through the meet & confer process..

### **12.2 Medical**

All full-time, including probationary, employees who work 30 hours or more per week on a regular basis are eligible, on the first of the month following completion of one full calendar month of service, for participation in the medical insurance plans of the District. The District shall pay toward the premiums for medical coverage a flat dollar cap.

Employees on an authorized leave of absence without pay may continue medical coverage per the leave of absence policy (see Leave of Absence policy, paragraph 7.3.1.7).

#### **12.2.1 Coverage for Retirees**

Medical coverage for employees and their spouses (spouse at the time of separation of employment) shall be provided for retired employees who are age 55 or over and who have a minimum of twelve years of service with the District on the same basis as provided active employees. If the retiree has dependent children who are covered by the plan at the time of retirement, those dependent children who are covered by the plan at the time of retirement, will be offered medical coverage as defined by the Consolidated Omnibus Reconciliation Act (COBRA). Retired employees who have had a break in service due to voluntary termination and have qualified for the *Coverage for Retirees*, who are subsequently rehired, do not need to meet the service requirement a second time to retain their retiree medical benefits once the subsequent employment term ends.

All retirees and spouses covered under the District's coverage are required to enroll in Medicare coverage at eligibility. Medicare coverage will become primary to the District's medical plan.

For employees hired on or after July 1, 2009, who become enrolled under the coverage for retirees, the medical coverage will terminate upon eligibility for Medicare coverage. Coverage for the spouse (if any) will terminate upon their own eligibility for Medicare or the retiree's eligibility for Medicare, whichever occurs first.

#### **12.2.2 Coverage for Survivors**

Medical coverage shall be provided for surviving spouse (spouse at time of employee's separation of employment) of retired employees and surviving spouse of active employees who upon death had attained age 55 and who had a minimum of twelve years of service with the District on the same basis as provided active employee. The District shall pay the District's share of premium for the surviving

spouse (spouse at time of employee's separation of employment) until the surviving spouse remarries, becomes enrolled under another group health plan within the State of California, or due to cancellation of coverage in accordance with the terms of the agreement with the insurance carrier then in effect.

For survivors of employees hired on or after July 1, 2009, who become enrolled under the coverage for survivors, the medical coverage will terminate upon eligibility for Medicare coverage.

### **12.3 Dental**

All full-time, including probationary, employees who work 30 hours per week on a regular basis are eligible, on the first of the month following completion of one full calendar month of service, for participation in the dental insurance plans of the District. The District shall pay toward the premiums for dental coverage on the following basis:

- Employee only: 100% of the premium
- Employee plus dependents: 80% of the premiums

Employees on an authorized leave of absence without pay may continue dental coverage per the leave of absence policy (see Leave of Absence policy, paragraph 7.3.1.7).

### **12.4 Vision**

All full-time, including probationary, employees who work 30 hours per week on a regular basis are eligible, on the first of the month following completion of one full calendar month of service, for participation in the vision insurance plan of the District. The District shall pay 100% of the premium for employee and dependent coverage.

### **12.5 Continuation Coverage**

Medical, dental, and vision coverage for employees and/or their dependents whose coverage would otherwise terminate due to qualifying events as defined by the Consolidated Omnibus Reconciliation Act (COBRA) such as, but not limited to, termination, reduction of hours, divorce, overage dependent, are eligible to continue their coverage for a specific period of time at their expense.

Under the District's group plan, upon hire, employees and dependents that are enrolled in a group plan sponsored by the District are provided with detailed information regarding continuation coverage. It is the employee's responsibility to inform the District of an event that qualifies a dependent for continued coverage.

### **12.6 Life**

All full-time, including probationary, employees who work 40 hours per week on a regular basis are eligible, on the first of the month following completion of one full calendar month of service, for participation in the life insurance plan of the District.

The District shall pay the premium for two times annual salary, not to exceed \$400,000. Board of Directors shall receive a life insurance benefit in the amount of \$25,000, paid for by the District. Employees and Board Members may, at their option, apply for and, through payroll deduction, obtain supplemental life insurance.

Basic and supplemental life insurance may be continued during a leave of absence without pay. The District will pay the basic life insurance premium per the leave of absence policy (see Leave of Absence policy, paragraphs 7.2 and 7.3).

### **12.7 Disability**

The District does not participate in the State Disability Insurance Program. All full-time including probationary, employees who work 40 hours per week on a regular basis are covered on the first of the month following completion of one full calendar month of service, in the short-term and long-term disability insurance plan of the District. The District pays the premiums.

This benefit provides for payment of two-thirds of your earnings, not to exceed plan maximum as stated in the Summary Plan Description in the event of a disability after thirty days of total disability, or exhaustion of sick leave, whichever is longer. Employees receiving disability benefits must apply accrued vacation or earned CTO in an amount equal to the difference between disability benefits received and his/her regular pay. Summary Plan Descriptions can be obtained from Human Resources.

### **12.8 Unemployment**

All employees are covered under State Unemployment insurance at no cost to the employee.

### **13. UNIFORMS, TOOLS**

Where applicable, uniforms, rain gear, and tools are furnished without cost to the employee. Upon termination such furnished clothing and equipment provided the employee must be turned into the District or the depreciated cost thereof will be deducted from the employee's final paycheck or otherwise charged to the employee. District issued uniforms, tools, equipment, vehicles, etc....are only for District business related use and may not be used for personal use at any time.

## **14. EMPLOYEE RECOGNITION PROGRAM**

The Employee Recognition Program recognizes and rewards employees for cost saving, morale enhancing, and innovative behaviors, ideas, actions, and accomplishments.

## **15. REIMBURSEMENT PROGRAMS**

### **15.1 Educational Assistance**

#### **15.1.1 Purpose**

The purpose of the education assistance program is to assist the employee in obtaining skills and/or knowledge to become better qualified for his/her current duties and/or prepare for potential advancement within the District.

#### **15.1.2 Employee Eligibility**

Regular full-time employees performing their jobs satisfactorily, as determined by an overall performance rating of at least "Proficient" on the last Performance Appraisal, are eligible for reimbursement. Probationary employees are not eligible for reimbursement.

#### **15.1.3 Provisions**

- A. Eligible courses are those taken for credit and related to the work of the employee's position, occupation, or advancement within the District as determined by the Department Manager, General Manager, and Director of Human Resources. This includes courses that, taken as required for certifications, taken as additional training, and those that are required to obtain a degree in a work-related field (including pre-requisites or electives).
- B. Eligible courses are those taken at an accredited institution or approved training organization. Correspondence courses from reputable institutions will be considered when equivalent courses are not available at local accredited schools, or when the employee's circumstances prevent attendance at courses offered locally.
- C. Courses shall be taken on employee's time, unless special circumstances warrant otherwise, and prior arrangements have been made with the supervisor and approved by the General Manager.
- D. Requests for tuition reimbursement may be denied based on district budgeting constraints for that particular fiscal year.
- E. Employees may not use District computers to complete classes online or complete homework assignments.

#### **15.1.4 Reimbursement**

- A. Eligible expenses are tuition or class registration fees, school registration, parking, laboratory/material fees, and books. Reimbursement is 100% of the cost of tuition, registration, parking, material/lab fees, and books up to a maximum of \$3,000 for employees in pursuit of any approved courses or undergraduate degrees. The maximum will be \$5,000 for employees in pursuit of an approved master's degree or doctoral program degree. Maximum reimbursement amounts are calculated on a fiscal-year basis.

- B. Reimbursement shall be made to the employee upon completion of the course with minimum final grade of "C." For graduate course work, a grade acceptable for credit to the institution must be earned.
- C. No employee will be reimbursed for expenses totaling less than \$5 per semester, quarter, or per class, whichever is applicable.
- D. Funds received from outside sources, such as scholarship grants or Veterans Educational Benefits, must be applied toward the cost of the course before the District's reimbursement is applied.
- E. Expenses reimbursed may be considered taxable income and subject to tax withholding.
- F. All funds received by an employee under this program within a twelve-month period prior to the date of voluntary termination of employment with the District shall be repaid by the employee.

#### **15.1.5 Procedure**

- A. The employee shall fill out an Educational Assistance Request, District form no. P-2, and submit it to his/her supervisor, Department Manager, and then Human Resources for approvals prior to the starting date of the course. P-2 Request forms received on or after the course start date will not be approved.
- B. Upon satisfactory completion of a course, the employee shall submit his/her grade report or proof of completion and evidence of fees paid (District form No. P-3) to the Director of Human Resources for authorization of reimbursement. P-3 Request forms received more than sixty days after the course end date will not be approved.

#### **15.2 Computer Purchase Plan**

The computer purchase plan is provided for the purchase and use of home computers and software to assist regular employees in developing computer skills, which will enhance the employee's current or future performance of his/her duties at the District.

Regular employees who have completed one year of service with the District, performing their jobs satisfactorily, are eligible for a loan under this program. The requirements and provisions are explained in detail in the Employee Personal Computer Purchase Plan.

## **16. DISCIPLINARY ACTION**

### **16.1 Authority**

The General Manager shall have the authority to demote, terminate, reduce in pay, or suspend without pay, for reasonable causes hereinafter defined, any regular full-time or part-time employee of the District. This policy does not apply to those positions classified as "at will," as defined in paragraph 3.2 of this manual, or to probationary employees.

### **16.2 Reasonable Cause**

"Reasonable Cause" shall include, but is not limited to:

- Absence without approved leave
- Excessive absence or tardiness
- Actions contrary to the personnel rules and regulations of the District
- Inefficiency or incompetence
- Discourteous treatment of the public or other employees
- Political activity precluded by State or Federal law
- Failure to possess or keep in effect any license, certification, or other similar requirement necessary for the employee to perform the duties of the job position or required by such job classification
- Misuse of sick leave
- Any willful act of conduct undertaken in bad faith, either during or outside of duty hours, which is such a nature that it causes discredit to the District or the employee's department
- Willful disobedience, insubordination, or actions contrary to specific directions given by management
- Dishonesty
- Intoxication while on duty
- Use of, possession of, or being under the influence of alcohol, drugs, or narcotics while on duty or in such close proximity thereof as to cause any detrimental effect upon the employee or upon other employees
- Falsification of forms, records, or reports including, but not limited to, timesheets, employment applications, etc.
- Possessing or bringing firearms or weapons onto District property, including District vehicles, or possessing firearms or weapons onto District property, including District vehicles, or possessing firearms or weapons in personal vehicles on District property
- Introduction or possession of intoxicating beverages, illicit drugs, or narcotics on District property, including district vehicles
- Disorderly or immoral conduct while on duty
- Conviction of a felony or misdemeanor involving moral turpitude
- Sexual harassment or other unlawful harassment of other employees



- Neglect of duty
- Working overtime without authorization
- Abuse or misuse of District property or equipment
- Abusive, offensive, or vulgar language
- Threatening or intimidating other employees or supervisors
- Actions incompatible with, or not in the best interests of, the purposes of the District
- Failure to follow safe working practices or failure to promptly report an injury
- Sleeping on the job
- Violations of the District Computer Use and E-mail Policies

### **16.3 Definition**

“Disciplinary Action” means action taken by the Department Manager or Supervisor or designee for disciplinary reasons, pursuant to these Policies. Nothing in these Policies requires imposition of disciplinary action in any particular order of severity or pursuant to the number of prior disciplinary actions. Such disciplinary actions include:

- A. Informal discussion;
- B. A formal warning;
- C. A written reprimand;
- D. Disciplinary suspension;
- E. Reduction in pay;
- F. Demotion; or
- G. Termination.

### **16.4 Informal Discussion**

An informal discussion is designed to clarify standards, policies, and procedures or policies and regulations so that problems are resolved early and, thus, the need to utilize disciplinary action may be avoided. (Not appealable)

### **16.5 Formal Warning**

A formal warning shall be given in response to minor misconduct. The warning should be prompt and constructive, and every effort shall be made for the formal warning to be given in private. The Supervisor should include in the formal warning a review of appropriate department standards and policies, employee performance expected in the future, and consequences for failure to correct performance or behavior. The formal warning shall be written. (Not appealable)

### **16.6 Written Reprimand**

A written reprimand is a written communication to the employee that the same or related offense has been committed. The written reprimand shall be given by the Department Manager, Supervisor, or designated authority when a formal warning has not succeeded in stopping the misconduct, or when the misconduct is

considered so serious as to warrant more than a formal warning. Misconduct includes failure to meet District and/or Department performance standards.

The Department Manager/Supervisor should first counsel the employee about the misconduct, as if giving a formal warning. At the end of the discussion, if no extenuating circumstances are discovered, the Department Manager/Supervisor will inform the employee that a letter of reprimand will follow and will be placed in the employee's personnel file located in Human Resources.

The written reprimand should include a full, accurate, and factual statement of the reason for the reprimand, including the date and time of the event which is the cause of the reprimand (if applicable), appropriate department standards and policies, employee performance expected in the future, and consequences for failure to correct performance or behavior. (Not appealable)

### **16.7 Disciplinary Suspension**

Disciplinary suspension shall be temporary removal of an employee from his/her duties without pay for misconduct. Disciplinary suspensions without pay deprive an employee of pay for any period up to sixty working days and are given when serious misconduct or repetition of past problems for which the employee has been reprimanded require a strong management response. The nature of the offense, its severity, and the circumstances dictate the length of disciplinary suspension. Recurrence of the same or similar offenses can result in a second or third disciplinary suspension of progressively increased duration or in dismissal. A disciplinary suspension is given an employee when formal warnings or written reprimands have not been effective, or when the misconduct warrants more than a reprimand. Employees may be suspended on the spot when there is a clear threat to the safety of other employees or the public.

### **16.8 Reduction in Pay**

Reduction in pay shall be a decrease in salary within the salary range for disciplinary purposes. The decrease may be permanent or for a fixed period of time. Denial of a merit increase or reclassification downward is not discipline and does not entitle an employee to notice or right of appeal.

### **16.9 Demotion**

The Department Manager/Supervisor may demote an employee for disciplinary reasons or because the employee's ability to perform the required duties falls below standards for that position, provided that the employee has been given a reasonable time to improve. Upon request of the employee, and with the consent of the General Manager, demotion may be made to a vacant position. No employee shall be demoted to a position unless he/she possess the minimum qualifications for such a position. The General Manager must approve all demotions.

## **16.10 Termination**

Termination, dismissal, or involuntary separation of an employee from District employment may be imposed when other disciplinary measures have failed, or when termination for an act of misconduct is deemed appropriate.

## **16.11 Documentation of Disciplinary Action**

All documented disciplinary actions will be placed in the employee's personnel file.

A formal warning should be documented in the format prescribed by the Director of Human Resources. The employee shall receive a copy of the documented formal warning, and a copy shall be placed in the employee's personnel file in the Human Resources Department. If the employee chooses to respond, that reply will also be placed in the employee's personnel file and be attached to the Supervisor's record of formal warning.

If the action taken is a disciplinary suspension, a reduction in pay, a demotion, or a termination, documentation shall be in accordance with the disciplinary procedures set forth below. A copy of all disciplinary documents shall be placed in the employee's central personnel file located in the Human Resources Department. The employee shall acknowledge receipt, in writing, of a copy of such disciplinary document. If the employee refuses to acknowledge receipt, in writing, that fact should be noted in writing.

## **16.12 Disciplinary Procedures**

### **16.12.1 Administrative Reassignment with Pay**

Pending investigation of an accusation against an employee, the General Manager may approve the temporary administrative reassignment of an employee, with or without pay, pending the undertaking or completion of an investigation or opportunity to respond as may be required to determine if any disciplinary action shall be taken.

### **16.12.2 Disciplinary Action Subject to Skelly Procedure (Employee Appeal Process)**

Prior to a disciplinary suspension, a reduction in pay, a demotion, or a disciplinary termination, the procedure set forth in this Section shall be complied with.

#### **16.12.2.1 Written Notice**

The employee's Manager/Supervisor shall give the employee a written notice of the proposed disciplinary action at least five working days prior to the effective date. The written notice shall be personally delivered to the employee or sent by certified mail to the employee's last known address.

The notice generally will include the following information:

- A. A description of the proposed action to be taken and its proposed effective date or dates;

- B. The specific grounds and particular facts upon which the action is proposed to be taken;
- C. The employee's right to receive a copy of the written materials alleged to support the proposed actions;
- D. A statement advising the employee of the right to respond, orally or in writing within five working days after the receipt of the written notice; and
- E. A statement that failure to respond by the time specific shall constitute a waiver of the right to respond prior to final discipline being imposed

**16.12.2.2 Employee Review and Response**

The employee shall be given an opportunity to review the documents or materials upon which the proposed disciplinary action is based. Within five working days after receipt of the written notice, the employee shall have the right to respond to the General Manager, orally or in writing (on an OCWD Discipline Appeal Form), concerning the proposed action.

Failure to respond within the time specified shall result in the employee's waiver of the employee's pre-disciplinary right to respond. By mutual agreement, the specified time period may be extended.

**16.12.2.3 Employee Rights and Restrictions**

- A. Right to Representation: The employee has the right to a representative throughout the pre-disciplinary process, at the employee's own cost. That representative is chosen by the employee and may be an attorney, an outside representative, or another District employee. If a District employee is selected as the representative, that employee's Department Manager/Supervisor must be notified in order to obtain permission to be absent from assigned duties necessary to make representation. Such permission shall not be unreasonably withheld.
- B. Right to Investigate: The employee and the employee's representative wishing to enter a work area for the purpose of investigating the notice of proposed discipline must first obtain permission to do so from the work area Supervisor. Any investigation shall be conducted on non-working time unless the Department Manager/Supervisor has granted prior approval to use District time. Permission in either case shall not be unreasonable withheld, giving consideration to the work of the department and occupational safety.

**16.12.2.4 General Manager's Decision**

The General Manager or designated authority shall, within five working days, unless the General Manager or designee decides a longer period is needed, provide a written decision to the employee after reviewing the employee's response, if any.

The decision shall be personally delivered to the employee or sent by certified mail to the employee's last known address and shall be dated and signed by the General Manager. If disciplinary action is to be taken, the written response shall include a

statement informing the employee of the right to appeal and request an Appeal hearing (on an OCWD Discipline Appeal Form) and the time period within which the appeal must be made.

If, within the five-day appeal period, the employee involved does not file an appeal, unless good cause for the failure is shown, the action of the General Manager or designated authority shall be final and not subject to any further appeal or right to appeal. If an employee withdraws the appeal, the employee waives the right to further review.

#### **16.12.2.5 Amended Notice of Disciplinary Action**

At any time before a disciplinary action becomes final, the Department Manager or designated authority may amend the proposed disciplinary action and provide a supplemental notice of proposed disciplinary action.

A decision not to impose any disciplinary action may be accompanied by a directive from the Department Manager to delete all references to the pending action from the employee's personnel file(s). Failure by the Department to make further investigations or to provide an additional written answer shall not affect the ability of the District to impose disciplinary action.

If the amended or supplemental notice of proposed disciplinary action presents new causes or allegations, the employee shall be provided further written notices as stated in Section 16.2.2.2 and shall be afforded the opportunity to prepare a response in accordance with the above policy.

### **16.12.3 Appeal Hearing Process**

#### **16.12.3.1 Hearing Officer**

The Hearing Officer is designated to hear appeals on personnel-related matters, with the exception of grievances. The Hearing Officer shall be an outside independent person (not employed by the District) who is qualified to hear such appeals. The selection of the Hearing Officer shall be selected by mutual agreement, if possible, from a list of hearing officers furnished by the Public Employment Relations Board, State Mediation & Conciliation Service. In the absence of mutual agreement, the hearing officer shall be appointed by the Office of Administrative Hearings. The cost of the hearing officer shall be borne by the District. *Haas v. County of San Bernardino* (2002) 27 Cal. 4<sup>th</sup> 1017, 1024, 1029-31.

#### **16.12.3.2 Request for Appeal**

Every appeal to the Hearing Officer must be filed within five working days, in writing (on the OCWD Discipline Appeal Form), with the Director of Human Resources. Failure to file a timely appeal shall be deemed a waiver of the right of appeal. The appeal shall state the facts upon which it is based, the action requested by the Hearing Officer, and shall be signed and dated by the appellant. The statement of facts in the appeal shall provide in sufficient detail the necessary facts and identify all persons or departments concerned in order that the Hearing Officer may

understand the nature of the proceeding and appeal. The appellant's Department Manager shall be considered the only responder unless the written appeal identifies other respondents. The Director of Human Resources shall serve a copy of the appeal to the respondent.

The appellant or respondent may, at any time prior to the hearing, file a written statement setting forth in detail all facts essential and necessary to support his/her position. The parties are encouraged to include with, and set forth in, the statement all exhibits essential and necessary to support their position and which they intend to offer into evidence.

#### **16.12.3.3 Answer**

The respondent is not required to file an answer to the appeal. If an answer is filed prior to the hearing, a copy thereof shall be sent to the appellant by the Director of Human Resources. If no answer is filed, every relevant and material allegation of the appeal is in issue; but in any case, irrelevant and immaterial issues may be excluded by the Hearing Officer.

#### **16.12.3.4 Time for Hearing**

Within five days after receipt of an appeal in writing, the Director of Human Resources shall notify, in writing, the appellant and respondent of the date, time, and place of said appeal hearing. Every hearing on an appeal shall commence within thirty days after notice by the Human Resources Director to the appellant and respondent of the date, time, and place of said appeal hearing unless:

- A. The time extended by mutual consent of the appellant and correspondent;
- B. A Hearing Officer cannot be selected within that time, in which case such hearing shall be scheduled by the Hearing Officer as soon as practicable; or
- C. The Director of Human Resources or the Hearing Officers has granted an extension of time within which to commence the hearing.

#### **16.12.3.5 Notice of Hearing**

Written notice of the time and place of hearing of appeal shall be served by the Director of Human Resources on the appellant and the respondent within five working days of receipt of the notice of appeal. This notice may be delivered personally or by certified mail to the employee's last known address. A respondent or appellant may seek a continuance of the hearing date by making a written request to the Director of Human Resources stating the grounds for such a request and the requested date for the hearing. The Human Resources Director shall have the authority to determine whether to grant a continuance and to set the hearing date.

#### **16.12.3.6 Pre-hearing Meeting**

The Hearing Officer has the authority to require an appellant and respondent to meet prior to the commencement of a hearing for the purpose of using a good faith effort to prepare a joint written statement of the claims and defenses and disputed and undisputed facts, and to submit separate written statements where concurrence on

such items could not be achieved. Parties are encouraged to voluntarily meet for this purpose and submit such statements.

#### **16.12.3.7 Witness List and Subpoenas**

The respondent and appellant shall submit, in writing to the Director of Human Resources, at least three working days prior to the start of the hearing, the names of any witnesses expected to be called during the hearing. The Director of Human Resources shall provide each party the names of witnesses so submitted in advance of the hearing. The respondent or appellant may request approval from the Hearing Officer for the issuance of subpoenas to compel the person(s) to testify at a hearing or the production of documents to be brought to a hearing by submitting a written request to the Director of Human Resources.

Such a request must state with particularity the person(s) or document(s) sought to be compelled and the relevancy of that person(s) or that document(s) or both to the matters to be tried in the hearing. The Hearing Officer or the Director of Human Resources, if so delegated, shall cause subpoenas to be issued when the Hearing Officer or the Director of Human Resources, whichever applies, deems appropriate.

#### **16.12.3.8 Nature of Hearing**

Each hearing shall be closed unless the appellant requests an open hearing. Any party may be self-represented or have legal counsel or another representative of choice. The hearing shall be conducted by the Hearing Officer pursuant to these Policies. The Hearing Officer shall be conducted by the authority to: open and adjourn the hearing; rule on evidentiary questions; call, question, and cross-examine witnesses; call for and introduce documentary evidence for the purpose of adequately understanding the facts and issues of the hearing; otherwise control the conduct of the hearing, and meet in closed session with legal counsel to deliberate and prepare findings.

The hearing shall be informal and technical rules of evidence shall not apply to the proceedings. Any relevant evidence will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule, which may make improper admission of such evidence based on the objection raised in civil actions. Hearsay evidence may be used for the purposes of supplementing or explaining any direct evidence but will not be sufficient in itself to support a finding unless it would be admissible over objection to the same extent that it is now or hereafter may be recognized in civil actions. Irrelevant, immaterial, or unduly repetitious evidence or evidence protected by the Policies of Privilege, recognized by law may be excluded. All Testimony at the hearing shall be recorded manually or by mechanical device or by use of a Certified Shorthand Reporter (CSR). In the event a CSR is used, appellant and the respondent shall split costs. All testimony shall be given under oath. Stipulations of fact may be introduced into evidence with respect to any issue. Each respondent and appellant shall have the right to appear, to speak, to call, to

examine, and to cross-examine witnesses including those called by the Hearing Office, and to introduce documentary and other evidence. If the appellant does not testify in the appellant's own behalf, the appellant may be called and examined as if under cross-examination.

**16.12.3.9 Exclusion of Witnesses**

Upon the motion of any appellant, respondent, or upon its own motion, the Hearing Officer may exclude from the hearing room any witnesses not at the time under examination; but an appellant or respondent to the proceedings or their representatives in the case shall not be excluded.

**16.12.3.10 Proposed Findings of Fact**

Both appellant and respondent shall have the right to file proposed findings of facts or a brief or both with the Hearing Officer on or before the date the hearing is closed. Any party who submits proposed findings of facts, a brief, or both must serve such document immediately upon all other parties to the hearing.

**16.12.3.11 Official/Judicial Notice**

In reaching a decision, the Hearing Officer may take official notice of any matter that may be judicially noticed by the courts of this State. Parties present at the hearing will be informed of the matters to be noticed, and those matters will be noted in or appended to the record. Any party will be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, with the specific manner to be determined by the Hearing Officer.

**16.12.3.12 Order of Proof at Hearing**

The order of proof in the hearing will be as follows:

- A. The respondent will present evidence in support of the disciplinary action.
- B. The appellant or the appellant's representative will produce such evidence as the appellant may wish to offer in the appellant's defense.
- C. Any party may then offer rebuttal evidence, with the respondent having the right of last rebuttal.

**16.12.3.13 Findings of Fact and Recommendations to the Board of Directors**

The Hearing Officer shall make and certify written findings of fact and recommendations to the Board of Directors no later than thirty working days after completing the Hearing.

**16.12.3.14 Disposition of Appeal**

Within ten working days of receipt of the Hearing Officer's findings of fact and recommendation, the Board of Directors shall adopt, reject, or modify in whole or in part the recommendation of the Hearing Officer, and shall so notify the employee, respondent, and the Hearing Officer. The Board's decision will be final and binding.



The Board of Directors shall modify or reject the Hearing Officer's recommended decision only for just cause, supported by substantial evidence in the record, as set forth in the Board's written final decision.

**16.12.3.15 Burden of Proof**

The respondent carries the ultimate burden of proof of which is a preponderance of the evidence.

**16.12.3.16 Withdrawal of an Appeal**

The appellant may submit a written request to withdraw the appeal at any time before a final and binding decision is made.

**16.12.4 Pre-Layoff and Post Layoff Evidentiary Hearing Procedures**

**16.12.4.1**

In accordance with the decisions of *Levine v. City of Alameda*, 525 F.3d 903 (9<sup>th</sup> Cir. 2008) and *Clements v. Board of Trustees of the Airport Authority of Washoe County*, 69 F.3d 321 (9<sup>th</sup> Cir. 1995), regular employees within the meaning of Section 3.4 who are subject to layoff or reduction in force, and who are not granted bumping, demotion or transfer rights, shall be entitled to a pre-layoff and post-layoff evidentiary hearing as set forth in Section 17.12.3.

**16.12.4.2**

In view of the due process protections regular employees enjoy, the procedures set forth in Section 17.12.2 and 17.12.3 shall generally apply to layoffs and reductions in force of regular employees, except that the terms layoff or reduction in force shall be substituted for any reference to discipline. The OCWD Discipline Appeal Form shall not be applicable or used in connection with a layoff or reduction in force.

## **17. GRIEVANCES**

### **17.1 Matters Subject to Grievance Procedures**

A “grievance” is a job-related complaint by an employee regarding the terms and conditions of employment which arise out of a specific fact, situation, or transaction, other than discipline, that results in alleged violation of existing ordinances, rules, regulations, or policies administered by the employee’s Department Manager/Supervisor or designated authority concerning wages, hours, or other terms and conditions of employment. The solution of any such grievance must be wholly or partially within the province of the District to rectify.

### **17.2 Matters NOT Subject to Grievance Procedures**

The following matters are not subject to the grievance procedure:

- Employee discipline (as defined in Disciplinary Policy);
- Employee performance evaluations, including denial of a merit increase, or performance pay issues;
- Management of the District generally and issues of District or Department policy;
- Necessity and organization of any service or activity conducted by the District, including the expansion or reduction of services or work force;
- Determination of the nature, manner, means, technology, and extent of services to be provided to the public;
- Types of equipment or technology to be used;
- Determination of and/or change in facilities, methods, technology, means, and size of the work force by which District operations are to be conducted;
- Determination of and change in the location, number of locations, relocations and types of operations, processes, and materials to be used in carrying out District functions;
- Work assignments and schedule in accordance with requirements as determined by the District;
- Establishment, implementation, and modification of productivity and performance programs and standards;
- Reduction in force or layoffs for lack of work or other non-disciplinary reasons;
- Establishment and approved modifications of Departmental organization, supervisory assignments, chains of command, and reporting responsibilities; and
- Levels of compensation, pay and benefits based upon budgetary and fiscal considerations.

### **17.3 Freedom from Reprisal**

No employee shall be subject to coercion or disciplinary action for discussing a request or complaint with his/her immediate Supervisor, or for filing a grievance petition.

#### **17.4 Resolution**

Any grievance petitions resolved at any step of the grievance procedure shall be considered conclusive. Any grievance shall be considered resolved if it is not brought forward by the grievant through the grievance steps in the time frame prescribed.

#### **17.5 Withdrawal**

Any grievance petition may be withdrawn by the grievant at any time, without prejudice.

#### **17.6 Resubmission**

Upon consent of the person hearing the grievance petition and the grievant, a petition may be resubmitted to a lower step in the grievance procedure for reconsideration.

#### **17.7 Employee Representation**

If requested, an employee may have representation in the preparation and presentation of the grievance at any step in the formal grievance procedure, except that no Supervisor or Department Manager shall be represented by an employee whom the employee may supervise, and no employee shall be represented by a Supervisor or Department Manager.

The employee(s) and one employee representative are entitled to be released from work for a reasonable period of time in order to present the grievance.

#### **17.8 Obey Now/Grieve Later**

If an employee is given a legitimate order that he/she wishes to grieve, the employee must first complete the assignment and file a grievance later unless the assignment endangers the health or safety of the employee or others or if the requested assignment violates the employee's constitutional rights or is against criminal law.

#### **17.9 Initiation of Grievance Procedure**

An employee must initiate the grievance procedure (formal or informal) within fifteen working days of the occurrence of the event giving rise to the grievance, or within fifteen working days after the grievant should, with reasonable diligence, have had knowledge of such occurrence whichever is later.

#### **17.10 Grievance Procedure**

**The following are the "steps" utilized in grievance reporting.**

**Step 1:** Every effort should be made to resolve a grievance through discussion between the employee and the employee's immediate Supervisor, unless extenuating circumstances exist.

If the employee is not satisfied with the decision reached in Step 1, or if extenuating circumstances exist, the employee shall have the right to move forward in the Grievance Procedure.

**Step 2:** If the employee is not in agreement with the decision rendered in Step 1, he/she shall have the right to present a formal grievance to the Department Manager within fifteen working days after the occurrence of the incident causing the grievance, if applicable. Otherwise, the right to file a grievance petition shall be waived.

All grievances shall be submitted in writing on the OCWD Grievance Form (or other acceptable written format) to the Department manager, and no grievance petition shall be accepted until the written document is received. The written grievance shall contain a clear concise statement of the grievance and the facts upon which is based; rule, regulation, or policy allegedly violated, and the specific remedies sought.

The Department Manager will render a written decision within ten (10) working days after receipt of the written grievance.

**Step 3:** If the grievance is not satisfactorily resolved in Step 2, the employee shall have the right to submit the written grievance to the General Manager within ten (10) working days after the Department Manager's decision is received by the employee. The General Manager shall meet with the grievant and, after the initial meeting, the General Manager or his or her designee will investigate the complaint. The General Manager will render a written decision within ten (10) working days after receipt of the written grievance.

**Step 4:** If the grievance is not satisfactorily resolved in Step 3, the employee or the Department Manager shall have the right to request non-binding mediation, to be handled through State Mediation and Conciliation Services. The employee or Department Manager must submit a written request for non-binding mediation to the Director of Human Resources within ten (10) working days after the General Manager's decision is received by the employee.

The General Manager may consider written documents and/or oral statements generated from mediation and shall render a written advisory decision which shall be final and conclusive.

If mutually agreeable, a meeting may be conducted involving all affected parties at any step in the grievance procedure prior to the rendering of a decision.

**Grievances concerning the General Manager will be immediately reported to the Director of Human Resources and either the Board President or Executive Committee of the full Board of Directors. Grievances concerning The Director of Human Resources shall be reported directly to the General Manager.**

## **DRUG AND ALCOHOL-FREE WORKPLACE**

It is the intent of the Orange County Water District to maintain a workplace that is free of drugs and alcohol and to discourage drug and alcohol abuse by its employees. The District has a vital interest in maintaining safe and efficient working conditions for its employees. Substance abuse is incompatible with health, safety and efficiency, and service to the public. Employees who are under the influence of a drug or alcohol on the job compromise the District's interests, endanger their own health and safety and the health and safety of others, and can cause a number of other work-related problems, including absenteeism and tardiness, substandard job performance, increased workloads for co-workers, behavior that disrupts other employees, delays in the completion of jobs, and disruption of service to the public.

The District has a comprehensive drug and alcohol policy that has been attached as Addendum A to the Personnel Manual.

### **18.1 Employee Assistance Program**

The District will maintain an Employee Assistance Program (EAP) to help employees who have personal problems, including alcohol and drug abuse, which impair or have the potential to impair their work performance. It is the employee's responsibility, however, to seek help. In the event that an employee voluntarily alerts the District of a drug or alcohol abuse problem, the employee will be made aware of the EAP and will be allowed to request a medical leave of absence for treatment, if necessary.

When an employee does not voluntarily seek treatment but is discovered by the District to have a drug or alcohol abuse problem which impairs or has the potential to impair said employee's work performance, the General Manager may, at his/her sole discretion and based on all the circumstances, determine to defer taking disciplinary action provided that the employee undergoes and successfully completes treatment for the drug or alcohol abuse problem, with no recurrence of violating this policy.

### **18.2 Negligence of Enforcement**

Supervisor/manager negligence in enforcing this policy may result in disciplinary measures imposed on the supervisor/manager. Any supervisor/manager who knowingly allows an employee to operate a District vehicle, equipment, or machinery while under the influence of alcohol or drugs, including prescription medications which may impair the employee's reflexes or judgement, or allows an employee to possess, use, or distribute alcohol or any prohibited substance while on duty, on or off District property, is subject to disciplinary action up to and including termination.

## **19. MISCELLANEOUS POLICIES**

### **19.1 Honorariums**

It is the policy of the Orange County Water District that honorariums for presentations accomplished on District time by District employees shall be paid to, and retained by, the District for deposit into the General Fund of the District.

### **19.2 Royalties**

It is the policy of the Orange County Water District that royalties for publication of work accomplished on District time by District employees shall be paid to and retained by the District for deposit into the General Fund of the District.

### **19.3 Conflicts of Interest and Acceptance of Gifts and Other Gratuities**

Employees shall not take part in or attempt in any manner to influence the consideration of any application, proceeding, or other matter involving their own personal property, real estate, investment, or other interest, or that of any relative or close personal acquaintance. In all such situations, the employee must disclose the nature of the relationship to his/her immediate supervisor and request to be relieved of any responsibility or involvement in such matter.

Employees shall not directly or indirectly solicit any gift or receive any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, promise, or any other form, under which circumstances it could reasonably be inferred the gift was intended to influence them or could be expected to influence them in the performance of their official duties, or was intended to influence them or could be expected to influence them in the performance of their official duties, or was intended as a reward for any official action on their part.

Gifts that will be shared with office staff, such as boxes of candy, flowers, and food, may be viewed as exceptions provided, they are minimal value and do not exceed limits imposed by law for gifts to public employees. All financial disclosure laws and regulations must be complied with.

If an employee receives any gift as specified above, the gift shall be rejected firmly but as tactfully as possible, so the good intentions of the giver are properly acknowledged.

### **19.4 Equal Employment and Harassment**

#### **19.4.1 Scope**

This policy applies to all Supervisors of the District, as well as to co-employees, elected and appointed officials, persons contracting with the District, producers, and other persons at the workplace whom the District knows or has a reason to know are violating this policy. All District personnel are expected to avoid any conduct that could be construed as harassment by any employee. Appropriate corrective action

will be taken against all offenders, including discipline or discharge of Supervisors or employees who violate this policy.

#### **19.4.2 Equal Employment**

The District is an equal opportunity employer. Personnel actions will comply with all applicable laws prohibiting discrimination based on race, religious creed, color, national origin, ancestry, physical handicap, intellectual disability, medical condition, marital status, pregnancy, age, genetic information, gender, gender identity, gender expression, sex, military or veteran status or sexual orientation. Any technique or procedure used in recruitment and selection of employees shall be designed to measure only the job-related qualifications of applicants. No recruitment or selection technique shall be used which, in the opinion of the District, is not justifiably linked to successful job performance.

#### **19.4.3 Sexual Harassment**

Sexual harassment of all types is specifically prohibited. Sexual harassment of employees in the workplace is illegal, unacceptable and will NOT be tolerated.

##### **19.4.3.1 Definition**

Under State and Federal law, it is unlawful to harass a person because of that person's sex. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. "Sexual harassment" also includes gender harassment and harassment based on pregnancy, childbirth, or related medical conditions. The definition of sexual harassment includes many forms of offensive behavior, including harassment of a person of the same gender as the harasser. It is illegal whenever: (a) submission to such conduct is made a condition of employment, either expressly or implied; (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual; or (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Examples of sexual harassment include unwelcome sexual propositions or marriage proposals; unwelcome hugging, kissing, or other offensive physical contact of a sexual nature; lewd gestures, remarks, or innuendos; unwelcome discussions of sexual practices or anatomy; and sexually offensive posters, photographs, drawings, cartoons, jokes, stories, nicknames, or comments about appearance.

#### **19.4.4 Policy Against Harassment**

The District strictly prohibits harassment of employees in the workplace based on race, religion, color, national origin, ancestry, physical handicap, intellectual disability, medical condition, marital status, age, gender, gender identity, or sexual orientation. Harassment includes all forms of offensive or unwelcome physical or verbal conduct that interferes with an employee's work or creates an offensive or hostile working environment.

Any employee who believes he/she has been unlawfully harassed should bring the matter to the attention of the employee's Supervisor immediately and provide a full and accurate report of the underlying facts. Where the employee's Supervisor is the alleged harasser, the employee should bring the matter to the attention of the Supervisor's superior. Employees are urged to report to the employee's Supervisor, but this is not required if the employee feels uncomfortable in doing so, or if the employee believes the Supervisor is the harasser. In all cases, employees are free to report such problems directly to the Director of Human Resources. Supervisors are required to report complaints to the Human Resources Department. At no time should the supervisor or department manager initiate an investigation of a reported complaint. All investigations shall be coordinated by Human Resources. If a member of the Human Resources Department is the subject of a complaint, the General Manager will designate an outside investigator. If the General Manager is the subject of a complaint, Human Resources will coordinate the investigation with the Board President.

Upon notification of a harassment complaint, the Director of Human Resources, or other person acting in that capacity, shall promptly conduct an investigation of the complaint or bring in an independent outside investigator to conduct the investigation.. The investigation will generally include interviews with (1) the complainant; (2) the accused harasser; and (3) any other person the Investigator, or person acting in that capacity, has reason to believe has relevant knowledge concerning the complaint. This may include victims of similar conduct.

All such reports will be kept confidential to the greatest extent possible; however, some disclosure will be necessary to conduct a proper investigation. In each case, the employee reporting the problem will receive a written reply from the Director of Human Resources, or other person acting in that capacity, on the results of the investigation and the action taken, if any. Any employee who is not satisfied with the reply may appeal to the General Manager and will receive a reply in writing. If the General Manager is the subject of an investigation, a designee will be assigned to hear the appeal.

No employee shall be subject to any form of retaliation for reporting any violation, or for participating in any investigation under this policy, provided that they have done so truthfully and in good faith. Employees who believe they have been retaliated against in violation of this policy may utilize the grievance procedure described in this Personnel Manual.

The Department of Fair Employment and Housing Act (DFEH) prohibits unlawful sexual harassment, as well as other forms of discrimination based on race, color, national origin, religious creed, age, disability, marital status, gender, gender identity, sexual orientation, and medical condition.



Employees may file complaints about sexual harassment or other illegal employment discrimination with the California Fair Employment and Housing Commission (1390 Market Street, Suite 410, San Francisco, CA 94102; Telephone 415-557-2325), or with the California Department of Fair Employment and Housing (San Bernardino Office: 1845 S. Business Center Drive, #127, San Bernardino, CA 92408-3426; Telephone 909-383-4711).

The Department of Fair Employment and Housing (DFEH) is authorized to accept and investigate complaints of employment discrimination and to mediate settlements as well as issue accusations against employers, conduct formal hearings, and award reinstatement, back pay, damages, and other affirmative relief. The Law prohibits retaliation in any investigation, proceeding, or hearing concerning the allegations..

The District will NOT tolerate any unlawful harassment or discrimination in employment. Violation of this policy can result in immediate termination of employment.

A violation of this policy is subject to the formal grievance procedure as described in this Personnel Manual. If the allegation of harassment implicates any person rendering in a decision at any step in the grievance procedure, the employee may omit that particular step and proceed to the next step of the grievance procedure.

#### **19.4.5 Malicious Complaints**

While the District vigorously defends its employees' right to work in an environment free from work harassment, it also recognizes that false accusations of harassment can have serious consequences. Accordingly, any employee who is found, through the District's investigation, to have knowingly falsely accused another person of harassment will be subject to appropriate disciplinary action up to and including termination.

### **19.5 Workplace Violence Policy**

#### **19.5.1 Policy**

The Orange County Water District (District) is committed to the principle that a work environment free of threats, violence, threatening behavior and acts of violence is essential for effective and efficient work and services. Civility, understanding, and mutual respect toward fellow employees and members of the public are intrinsic to the services we provide.

The District does not tolerate acts of workplace violence, sexual harassment, intimidation, or threatening language committed by or against employees. Verbal threats of violence, threatening behavior, or acts of violence by anyone, including employees, contractors or the public, while engaged in District business or while performing official duties, will not be tolerated. The District strictly prohibits employees from making threats or engaging in violent acts. Employees found to

have violated this policy will be disciplined pursuant to the Personnel Manual Section 16.

All District employees are responsible for notifying their immediate supervisor or Human Resources of any threats of violence, threatening behavior or acts of violence they have received or witnessed or otherwise have knowledge of. Management will report credible suspicions of criminal misconduct to law enforcement authorities.

The possession or use of weapons by District employees is prohibited while the employee is acting within the course and scope of employment or on District premises. Employees with a valid carry concealed weapon permit (CCW) or who are otherwise legally in possession of a firearm, but who are not authorized to carry a firearm in the course and scope of their employment, shall not bring the weapon on District premises or any other assigned location or business while on duty. This includes the possession of such weapons in an employee's vehicle, locker, desk, etc. District premises include, the Fountain Valley offices, Field Headquarters in Anaheim, the Prado office, District spreading basins or well sites and all other locations where the District conducts District activities on an ongoing or routine basis. A weapon is a firearm or any other instrument capable of producing bodily harm when used in a manner or with the intent to harm or intimidate another person or would cause a reasonable person to have concern for his/her health, safety or the safety of another.

#### **19.5.2 Definitions of Workplace Violence, Threats and Violent Behaviors**

For the purpose of this policy, workplace violence, threats and violent behavior are defined as:

- Workplace violence is any act or threat of physical violence, harassment, intimidation, or other threatening disruptive behavior that occurs at the work site. It ranges from verbal abuse to threats to physical assaults and even homicide.
- A threat of violence is a statement or "course of conduct" which would cause a reasonable person to believe that he or she is under threat of death or bodily injury, and which actually causes a person to believe that he or she is under threat of death or bodily injury. This can be an actual or implied threat of harm to an individual, group of individuals, or relatives of those individuals. These threats may be made in person, over the telephone, through public or private mails, interoffice mail, email, electronic communications or social media.
- Course of conduct is a pattern of behavior composed of a series of acts over a period of time, however short, evidencing continuity of purpose. Such course of conduct may include: following or stalking an employee or other person to or from the place of work; unwanted entry into the work area or following another at the place of employment; unwanted telephone calls or correspondence to

another, including but not limited to use of public or private mails, interoffice mail, email, electronic communications or social media.

- Loud, disruptive or angry behavior or language which is not part of the typical work environment.
- Blatant or intentional disregard for the safety or well-being of others.
- Willful destruction of District or personal property.
- Commission of a violent felony or misdemeanor on District property.
- The possession of weapons of any kind on District property, unless specifically authorized by the District or appointing authority, or the brandishing of any object, which could reasonably be construed as a weapon.
- Any other act that a reasonable person would perceive as constituting a threat of violence.

### **19.5.3 Prohibited Conduct**

Prohibited conduct includes, but is not limited to:

- Engaging in behavior that creates a reasonable fear of injury in another person;
- Engaging in behavior that subjects another individual to extreme emotional distress;
- Abusive conduct or yelling, screaming, gesturing in a way that threatens or makes another fearful;
- Threatening to injure an individual or damage property;
- Pushing, shoving, striking or physically injuring another individual;
- Committing injurious acts motivated by, or related to, domestic violence or sexual harassment;
- Intentionally damaging property or another employee's personal property while it is located on District property; and
- Possessing, claiming to possess, brandishing, or using a weapon while on District premises or engaged in District business.

### **19.5.4 Employee Reporting Responsibilities and Actions**

Any District employee who believes he or she had been a victim of workplace violence or threat of violence, or has witnessed or been made aware of such behavior or incident in the workplace, should report the facts of the incident(s) and names of the individuals involved immediately to his or her supervisor and/or to Human Resources.

Any District employee who becomes aware of an act of violence which involves imminent physical harm should warn others of the danger, immediately leave the area of danger if possible, and notify Risk & Safety, Human Resources or extension 3300. All other persons who are on the premises should evacuate the incident site and report to a safe area, if possible.

### **19.5.5 Identifying and Responding to Risks**

The District identifies and responds to workplace violence hazards as follows:

- Threat assessment: Periodically, the Human resources Department and the Risk & Safety Department, in coordination with security consultants, will assess the District's vulnerability to violence and determine if any changes to, or additional preventative measures are necessary. The work site review should include, but not be limited to, inspecting security measures, analyzing records of violent incidents and monitoring trends. The Human Resources in communication with Risk & Safety Department maintains records of all threats and incidents of violence committed against employees. Access to such records is on a need-to-know basis only.
- Security planning for at-risk employees: Some employees are known to be at risk for violence because of the nature of their jobs. Other employees can be at risk because they are subject to violence, threats, or harassment from a current or former spouse or partner or other non-employee. The Human Resources Department and Risk & Safety Department will work with at-risk employees and their supervisors to develop safety plans that address the specific risks the employees face while at work.
- Pre-hire screening: The Human resources Department conducts a thorough background investigation on all newly hired employees which includes checks of criminal and civil court records, conviction records, social security number, driving record, and verification of degrees, registration, or other certification if required.
- Protective or Restraining Orders: When District property or a District facility is listed as a protected area in a restraining order, the employee applying for the restraining order must provide the Human Resources Department with copies of:
  - The petition and declarations;
  - Any Temporary Restraining Order;
  - Any final permanent protective or restraining order; and
  - Any court order which modifies any of the above documents.

### **19.5.6 Guideline for Handling Threats of Violence and Violent Situations**

The Human Resources Department and Risk & Safety Department maintain and distributes to all employees, guidelines and procedures for handling workplace violence and threats.

The guidelines are developed with the advice of local law enforcement personnel and/or qualified security consultants. The Human Resources Department and Risk

& Safety Department are responsible for periodically reviewing the guidelines to ensure that they are adequate and up to date.

All threats of (or actual) violence, both direct and indirect, must be reported as soon as possible to your immediate supervisor, Human Resources or any other member of management. Employees may contact the appropriate law enforcement authorities without first informing their immediate supervisor if there is a reasonable belief that immediate danger to their own safety or that of others exists. Employees shall then immediately report to their supervisor or others in the District.

A reportable incident can be an act or threat from employees, as well as other members of the public and includes those threats or acts that may be perceived, actually experienced or witnessed. When reporting an act or threat of violence, you should be as specific and detailed as possible. Employees must also report all threats or acts they witness or experience while on duty away from District premises or during any District-related activity, or which related to the employee or legitimate business interest of the District.

The identity of the individual making a report will be protected as much as is practical. In order to maintain workplace safety and the integrity of its investigation, the District may suspend employees suspected of violence or threats of violence, pending investigation.

#### **19.5.7 Support for Victims of Violence**

Victims of violent incidents in the workplace often have to contend with a variety of medical, psychological, and legal consequences. The District accommodates victims of workplace violence by:

- Referring victims to the Employee Assistance Program (EAP) provider;
- Providing flexible work hours or short-term or extended leave;
- Cooperating with law enforcement personnel in the investigation of the crime and the prosecution of the offender; and/or
- Providing a debriefing for employees in a timely fashion after a serious violent occurrence, to explain what happened and what steps are being taken by the District to support affected employees.

#### **19.5.8 Enforcement**

Supervisors, supported by Human Resources personnel, must immediately investigate any reported violence, harassment, or threats committed on District premises or against District employees. In no instance will an employee be disciplined, retaliated against, or discharged for good faith reporting of any legitimate act or threat of violence. Anyone reasonably believed to have engaged in retaliation of any kind will be subject to disciplinary action up to and including termination of employment and/or prosecution for any criminal behavior linked to retaliatory activity. Intentionally false or misleading reports are unacceptable and will be

handled through District personnel procedures regarding disciplinary measures up to and including termination.

All employees who commit violent acts or who otherwise violate this policy are subject to corrective action or discipline, up to and including termination of employment.

The District may seek the prosecution of all those who engage in violence on its premises or against its employees while they are engaged in District business.

## **19.6 Telecommuting**

### **19.6.1 Policy**

Telecommuting is a program that can enhance the District's ability to meet its business objectives. It can benefit not only the District and its employees, but also the community at large. Recognizing that it serves multiple interests, telecommuting is authorized in certain situations by the General Manager.

### **19.6.2 Guidelines**

Telecommuting is a management program to achieve business objectives. While personal benefits may be an outcome for the employee who participates, telecommuting is a management tool, not an employee benefit.

Telecommuting is a voluntary option. No employee will be required to participate.

Telecommuters will be subject to the same terms and conditions of employment as if they were reporting to their regular offices on their normal work schedule.

Employees will be evaluated and selected by management for telecommuting based on the suitability of their jobs, the likelihood of their success as telecommuters, and their Supervisor's ability to manage remote workers.

Participating Supervisors and telecommuters will sign the District's "Work from Home Agreement" and Safety Guidelines.

Jobs and individuals will be selected with consideration for maintaining or enhancing productivity to the District. No reduction in production is to result from telecommuting.

Telephone charges related to District business will be paid by the District. Proper documentation of these charges will be required.

In many instances, employees will provide their own equipment, which should be compatible with that used in their regular office. In selected cases, District equipment may be assigned or provided to the employee for telecommuting use.

Assigned or provided equipment will be budgeted through the individual department.

## **19.7 Automobile Usage and Accident**

### **19.7.1 Policy**

It is the policy of the District to provide vehicles for business use. In instances where a District vehicle is not available, employees will be reimbursed for using their private vehicle during the course of business as set forth below.

### **19.7.2 Guidelines**

Employees who drive District vehicles must provide evidence of a valid driver's license and be approved to operate such vehicles by Human Resources. Employees holding jobs designated as requiring driving for business as a condition of employment must be able to meet the driver approval standard of this policy at all times. The driving requirements are spelled out in each job description. In addition, such employees must inform their supervisors of any changes that may affect their ability to meet the standards of this policy. For all other jobs, driving is considered only an incidental function for the position. The District obtains motor vehicle records on a regular basis on all employees.

District vehicles will be assigned to those departments which have demonstrated a continuing need for them. Additional vehicles are maintained for use as needed. Employees traveling out of town on District business, subject to management approval, may also use rental cars. Optional insurance on rental vehicles should not be obtained.

Employees who need transportation in the course of their normal work may be assigned a District vehicle for their use. All other employees needing transportation for District business may use vehicles assigned to the department or those drawn from the motor pool. As a last alternative, when no District vehicles are available, employees may use their own vehicles for business purposes, provided evidence of insurance has been received and approved by the District and with the prior approval of a Department Manager.

Employees who drive a vehicle on District business must exercise due diligence to drive safely and maintain the security of the vehicle and its contents. The use of cellular phones (hands-free) while driving on district business is considered a dangerous distraction and not recommended. If your job requires your cell phone turned on while driving, it is recommended that you safely pull off the road before conducting business. Employees are responsible for any driving infractions or fines as a result of their driving.

Employees driving on District business may claim reimbursement for parking fees and tolls actually incurred. In addition, employees may also claim reimbursement for out-of-pocket expenses due to vehicular accidents that occur while conducting District business while using their own private vehicle. Employees may claim up to \$500 per accident. Employees driving District vehicles may claim reimbursement for gasoline and other expenses directly incurred for business purposes.

Employees who use their personal vehicle for approved business purposes will receive a mileage allowance equal to the Internal Revenue service standard mileage rate. This allowance is to compensate for the cost of gasoline, maintenance, and usage. Reimbursements shall not be approved if the employee has not complied with the above insurance requirements.

Employees who drive their own vehicle on District business must, on any annual basis, provide Human Resources with a certificate verifying that they have insurance coverage. Before any employee can obtain reimbursement, the employee must have the prior approval from their Department Manager and have a current insurance certificate on file with Human Resources.

Employees are not permitted, under any circumstances, to operate a District vehicle, or personal vehicle for District business, when any physical or mental impairment causes the employee to be unable to drive safely. This prohibition includes, but is not limited to, circumstances in which the employee is temporarily unable to operate a vehicle safely or legally because of illness, medication, or intoxication.

Employees must report any accident, theft, or damage involving a District vehicle, or a personal vehicle used for District business, to the Purchasing Manager, and the Risk & Safety Manager, regardless of the extent of damage or lack of injuries. Employees are expected to cooperate fully with authorities in the event of an accident. However, they should not make any statements other than in reply to questions of investigating officers.

Time spent by non-exempt employees in driving a District or personal vehicle on District business during normal working hours is considered hours worked for pay purposes.

### **19.7.3 Training**

All employees who drive a District vehicle or who drive their own vehicle on District business must complete an on-line driver safety training course. In addition, certain job classifications will have requirements that the employee attend a Defensive Driving class as required. Other fleet safety training (i.e., Traffic Control) may also be required depending upon the employee's job requirements.

### **19.7.4 Disciplinary Action for Accidents**

Employees who drive District and personal vehicles during District business are expected to maintain a good driving record. If an employee whose job requires driving as a condition of employment has a chargeable accident in a District vehicle, or personal vehicle while conducting District business, the employee is subject to disciplinary action as stated in the Disciplinary Action policy contained within this manual.

All employees involved in an accident will be required to:



- Report the accident to their supervisor and Risk & Safety as soon as possible
- If safe to do so, take pictures at the scene of the vehicles and anything involved in the accident
- Complete the Driver's Report of Accident
- Complete the fleet safety re-training

If an employee operates any District vehicle (including heavy equipment) while physically or mentally impaired, the employee is subject to immediate suspension or termination. This prohibition includes, but is not limited to, instances where an employee is temporarily unable to operate a vehicle safely or legally due to illness, medication, or intoxication.

## **19.8 Lactation Accommodation Policy**

### **19.8.1 Policy**

The District recognizes the need to promote a work environment that is supportive of employees who wish to express milk while at work. Employees will be provided a reasonable amount of break time to express breast milk and will provide the use of a private space, other than a bathroom, near the employee's work area. The employee's normal work area can be used if it allows for the employee to express milk in private (i.e. private office with a door that can be locked). The private space shall be safe, clean and free of toxic or hazardous materials (as defined in labor Code Section 6382), contain a place to sit, a surface to place a breast pump and personal items, access to electricity, and must be in close proximity to access to running water and a refrigerator.

### **19.8.2 Guidelines**

Employees who wish to express breast milk are required to use paid rest break periods already provided. If the employee needs a reasonable amount of additional time for expressing milk beyond the normal paid rest break, the time can be requested but is unpaid. Employees can choose to use accrued vacation, in-lieu, or comp time to cover the additional time necessary.

### **19.8.3 Request Procedure**

An employee has the right to request a lactation accommodation. An employee who has a need for lactation accommodation should inform her supervisor and/or the District's Human Resources Department and discuss any relevant workload or scheduling issues. Employee will be provided a Request for Lactation Accommodation Form to complete which should be submitted to Human Resources for review at least five (5) business days in advance of the need for the lactation accommodation. Human Resources will respond in writing to the request.

### **19.8.4 Retaliation Related to Expressing Milk**

The Orange County Water District expressly prohibits retaliation against lactating employees for exercising their rights granted by the law. This includes such conduct that unreasonably interferes with an employee's work performance and creates an intimidating, hostile or offensive working environment. Any incident of harassment of a lactating employee will be addressed in accordance with the District's policies and procedures for discrimination and harassment.

#### **19.8.4.1 Filing a Complaint**

Nursing mothers who feel they have been denied appropriate accommodation are encouraged to contact the Human resources Department. The Human Resources Department may be contacted for information to file a complaint. Investigations will be conducted in accordance with the District Discrimination Complaint Procedure.

Complaints may also be filed with the State compliance agency (Department of Fair Employment and Housing (DFEH) and/or State Labor Commission), and/or the Federal compliance agency (Equal Employment Opportunity Commission (EEOC)).

## **19.9 Professional Memberships and/or Certificate Renewal Fees**

### **19.9.1 Policy**

The District will consider requests to pay the costs for professional memberships and/or Certificate renewal fees. All requests are subject to General Manger approval during the budget process each fiscal year. The Board of Directors has final approval of the annual budget and any funds that are being proposed for such costs. Approval will be made on a fiscal year basis and requests must be re-approved during the budget preparation process each year.

### **19.9.2 Employee Eligibility**

Regular, full-time employees, performing their jobs satisfactorily, as determined by an overall performance rating of at least "Meets Expectations" on the last Performance Appraisal, are eligible to make requests. Probationary employees are not eligible for this program.

### **19.9.3 Request Procedure**

The employee shall submit requests directly to their department manager in writing to include total costs to be considered each fiscal year. Request must be submitted during the budget process and prior to draft budget review by the General Manager. If the department manager supports the request, they will make that recommendation to the General Manager during the budget review process each fiscal year.

Employees may send their written requests to Human Resources or the General Manager directly if preferred, however, those requests will still be reviewed with the respective department managers before final decisions are made by the General Manager to include those funds in the proposed budget for the Board of Directors consideration each fiscal year.

Approval for these costs is decided on a fiscal year basis, and if approved, are not guaranteed for approval in subsequent fiscal years.

# **ADDENDUM A**

## **Orange County Water District**

### **Drug & Alcohol Policy**



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Orange County Water District (OCWD) has a significant interest in ensuring the health and safety of its employees. It has an obligation to ensure that its employees do not present a safety risk to the general public. Drug or alcohol use may pose a serious threat to job performance, employee health and safety, and public safety.

For these reasons, it is the policy of OCWD to prevent substance use or abuse from having an adverse effect on its employees. OCWD maintains that the work environment is safer and more productive without the presence of alcohol, illegal or inappropriate drugs in the body or on company property. Furthermore, employees have a legitimate expectation to work in an alcohol and drug-free environment and to work with employees free from the effects of alcohol and drugs. Employees who abuse alcohol or use drugs are a danger to themselves, their coworkers and OCWD's assets.

OCWD will be firm in identifying and disciplining those employees who do not voluntarily seek assistance and who continue to abuse alcohol or use controlled substances in violation of the following:

No employee who is on duty or on standby for duty will:

1. Use, possess, or be under the influence of illegal or unauthorized drugs or other illegal mind-altering substances; or
2. Use or be under the influence of alcohol to any extent that would impede the employee's ability to perform his or her duties safely and effectively.

No employee will perform duties that, because of drugs taken under a legal prescription, cannot be performed without posing a threat to the health or safety of the employee or others. This includes medications that may impair the employee's ability to operate machinery or motor vehicles.

Employees will be subject to drug and alcohol testing when there is reasonable suspicion that the employee has violated the rules expressed herein. In addition, when such an employee has already been found in violation through the adverse action or medical examination process under this policy, as a result of substance testing under this policy, or by the employee's own admission, the employee will be required to submit to periodic substance testing as a condition of remaining in or returning to District employment.

## **I. SCOPE**

The purpose of this policy is to protect District employees and the public from risks associated with alcohol abuse and controlled substances use. This policy is also intended to comply with all applicable Federal and State regulations



governing workplace anti-drug programs in the transportation industry. The Department of Transportation (DOT) has implemented “Procedures for Transportation Workplace Drug Testing Programs” (49 CFR, Part 40) and “Controlled Substances and Alcohol Use and Testing” (49 CFR, Part 382). The regulations mandate urine drug testing and breathalyzer alcohol testing for safety-sensitive positions and prevent performance of such functions when there is a positive test result.

### **III. DESIGNATED EMPLOYER REPRESENTATIVE(S) (DER)**

The Designated Employer Representative(s) (DER) who is to answer employee questions about drug and alcohol policies and procedures is:

Director of Human Resources  
Senior Human Resources Specialist  
Human Resources Specialist

### **IV. APPLICABILITY**

This policy applies to all employees when they are on District property or when performing any District-related business. It also applies to employees operating District vehicles or equipment. It applies to off-site lunch periods and breaks when an employee is scheduled to return to work.

Visitors, vendors, and contracted employees violating this policy will not be permitted to conduct business on District property or projects and will be ordered off District property.

For the purpose of this program, the District may have up to three categories of employees:

General (Non-Safety/Security Sensitive)  
Safety/Security Sensitive  
Safety Sensitive (DOT)

#### **A. General (Non-Safety/Security Sensitive)**

Positions not addressed in the other two categories. This employment category is subject to reasonable suspicion, return-to-duty and follow-up controlled substance and/or alcohol testing.

#### **B. Safety/Security Sensitive**

Job positions which the District determines are safety or security sensitive in their nature. This employment category is subject to pre-employment, reasonable suspicion, return-to-duty and follow-up controlled substance and/or alcohol testing. These positions include the following functions:

1. Their duties involve a greater than normal level of trust, responsibility for or impact on the health and safety of others; and

2. Errors in judgment, inattentiveness or diminished coordination, dexterity or composure while performing their duties could clearly result in mistakes that would endanger the health and safety of others; and
3. Employees in these positions work with such independence or perform such tasks that it cannot be safely assumed that mistakes such as those described in (2) could be prevented by a supervisor or another employee.

**C. Safety-Sensitive (DOT)**

Job positions requiring the use of a commercial driver's license (CDL). A safety-sensitive employee is considered to be performing a safety-sensitive function during any period in which that employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive function. Safety-sensitive employees are subject to pre-employment, reasonable suspicion, random, post-accident, return-to-duty and follow-up controlled substance and/or alcohol testing as covered under Title 49 Code of Federal Regulations (CFR), Part 382.

**V. PROPER APPLICATION OF THE POLICY**

The District is dedicated to assuring fair and equitable application of this policy. Therefore, supervisors are required to administer all aspects of the policy in an unbiased and impartial manner. Any supervisor who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy with respect to their subordinates may be subject to disciplinary action, up to and including termination.

**VI. PROHIBITED SUBSTANCES**

Prohibited substances addressed by this policy include the following:

**A. Controlled Substances**

Controlled substances are drugs that include, but are not limited to, marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine.

**B. Marijuana Use and the Compassionate Use Act of 1996**

The Compassionate Use Act of 1996, Health & Safety Code section 11362.5, does not exempt or otherwise immunize an employee or job applicant from compliance with the Orange County Water District Drug & Alcohol Policy and the consequences of positive detection of marijuana in accordance with this policy, even in cases where the marijuana use is for medical purposes on a physician's recommendation. *Ross v. Ragingwire Telecommunications, Inc.* (2008) 42 Cal.4th 920, 924, 927-932.

## **C. CBD OIL**

It is important for all employers and safety-sensitive employees to know:

1. The Department of Transportation requires testing for marijuana and not CBD.
2. The labeling of many CBD products may be misleading because the products could contain higher levels of THC than what the product label states. The Food and Drug Administration (FDA) does not currently certify the levels of THC in CBD products, so there is no Federal oversight to ensure that the labels are accurate. The FDA has cautioned the public that: "Consumers should beware purchasing and using any [CBD] products." The FDA has stated: "It is currently illegal to market CBD by adding it to a food or labeling it as a dietary supplement." Also, the FDA has issued several warning letters to companies because their products contained more CBD than indicated on the product label.
3. The Department of Transportation's Drug and Alcohol Testing Regulation, Part 40, does not authorize the use of Schedule I drugs, including marijuana, for any reason. Furthermore, CBD use is not a legitimate medical explanation for a laboratory-confirmed marijuana positive result. Therefore, Medical Review Officers will verify a drug test confirmed at the appropriate cutoffs as positive, even if an employee claims they only used a CBD product.

## **D. Alcohol**

Alcohol is defined as the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol, including methyl and isopropyl alcohol.

## **VII. PROHIBITED CONDUCT**

No employee will report to any work site or will work impaired by any drug or alcohol, lawful or unlawful.

No employee at any work site will use or possess any quantity of any drug or alcohol, lawful or unlawful, except for authorized drugs that such use or possession would interfere with the performance of their duties. (Exception: The approved possession and use of certain drugs in the course of an employee's job, i.e. lab work)

No employee at any work site shall manufacture, dispense, distribute, or sell any drug or alcohol, lawful or unlawful.

No employee may perform or continue to perform security-sensitive or

safety- sensitive functions if the employee is using alcohol.

No employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.

No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

## **VIII. NOTIFICATION OF CRIMINAL DRUG CONVICTION**

All employees must, as a condition of employment, abide by the terms of this policy and report any conviction under a criminal drug statute for violations occurring on or off District premises while conducting District business. A report of conviction must be made to the human resources contact within five days after conviction, as mandated by the Federal Drug-Free Workplace Act of 1988 and the California Drug-Free Workplace Act of 1990. Failure to report such convictions may subject the employee to disciplinary action, up to and including dismissal.

## **IX. PRESCRIPTION AND NON-PRESCRIPTION SUBSTANCES**

Using or being under the influence of any legally obtained drug by an employee while performing District business, while on District property, or while on standby is prohibited if such use or influence may affect the safety of the employee, co- workers, members of the public, the employee's job performance, or the safe or efficient operation of the District's business.

An employee may continue to work, even though under the influence of a legal substance, if District management has determined, after consulting with a competent medical authority, that the employee does not pose a threat to their own safety or their co-workers and that the employee's job performance is not

significantly affected by the legal drug. Otherwise, the employee may be reassigned to an alternative position, if available, or be required to take a leave of absence or comply with other appropriate action as determined by the District.

Failure to report the use of such drugs or failure to provide proper evidence of medical authorization may result in disciplinary action.

## **X. VOLUNTARY ADMITTANCE**

Employees who believe they may have a substance abuse problem are encouraged to seek assistance for resolving that problem. An employee voluntarily seeking help can make a confidential request for assistance to their supervisor. The employee will be referred to an SAP (at employee's

own cost) for assessment and rehabilitation recommendations.

Prior to the assessment, the employee must sign a release of information that will enable the DER to receive the results of the assessment, and to receive subsequent reports related to the assessment, and the employee's successful completion of all recommendations for assistance.

Employees must use accumulated sick leave, vacation time, and compensatory time to participate in a rehabilitation program. The District will not be responsible for program costs.

Employees who admit to alcohol misuse or controlled substances use are not subject to disciplinary measures provided that the employee does not self-identify in order to avoid testing under the requirements of this program.

After approval from the SAP, the employee may return to work and may be subject to unannounced follow up testing, based on the SAP's recommendations. Any employee failing to complete the program will be subject to termination.

NOTE: Health insurance plans may provide coverage for rehabilitation costs. Health benefits information can be obtained from the District's human resources contact.

The following conditions must apply to the employee's self-admission:

1. The employee's admission cannot be made during his/her on-duty time. It must occur prior to the employee's reporting for duty on any particular day.
2. The employee's admission cannot be made in an attempt to avoid a required drug and/or alcohol test.
3. Under 49 CFR Part 382.121, FMCSA requires the driver be removed from safety-sensitive functions, including driving.
4. When the DER is satisfied that the driver has successfully complied with the SAP's recommendations for assistance, the employee's supervisor may return the employee to duty, including safety-sensitive functions, provided that:
  - a. Prior to returning to safety-sensitive functions, the employee will be required to provide a negative DOT drug and/or alcohol test result, and
  - b. An employee who self-identifies under this policy, and who then fails to comply with the SAP's recommendations will be considered to have engaged in conduct prohibited by this policy.

OCWD will adhere to the following terms, in accordance with its policy and 49 CFR Part 382.121:

1. No adverse action will be taken against a driver who admits to drug and/or alcohol use under the terms above, provided he/she cooperates with the assessment and recommendations for treatment.
2. An employee who self-identifies under this program will be given reasonable time to obtain the required assessment and assistance.
3. An employee, who complies with all requirements and the SAP's recommendations for assistance, will be permitted to return to duty.
4. A safety-sensitive employee who cooperates and successfully complies with this program will not be considered to have had a FMCSA violation of prohibited conduct under 49 CFR Part 382, Subpart B.
5. An employee who fails to comply with treatment recommendations, either under this provision, or as recommended by a SAP, will be subject to disciplinary action up to and including termination of employment.

## **XI. TESTING FOR PROHIBITED SUBSTANCES**

Testing will be conducted in a manner to assure a high degree of accuracy and reliability, using techniques, equipment, and laboratory facilities approved by the Department of Health and Human Services (DHHS).

Controlled substance testing includes marijuana, cocaine, opiates, **Codeine, Morphine, 6-actylmorphine(6-AM), Hydrocodone/Hydromorphone, Oxycodone/Oxymorphone, Methamphetamines**, amphetamines, and phencyclidine (PCP). **In addition, as of January 1, 2018, methylenedioxyamphetamin (MDA) is now part of the "Screening Level" and removed from the "Confirmation Level" is methylenedioxyethylamphetamine (MDMA).** An initial controlled substance screen will be conducted on each specimen. For specimens that test above initial screening thresholds, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the controlled substance levels are above the minimum thresholds established in the DOT guidelines (49 CFR, Part 40).

Tests for alcohol concentration will be conducted utilizing an approved Evidential Breath Testing (EBT) device operated by a trained Breath Alcohol Technician (BAT). If the initial test indicates an alcohol concentration of 0.02 or greater, a confirmation test will be performed to confirm the result of the initial test. An employee who has a confirmed alcohol concentration of 0.02 but less than 0.04 will be removed from their position for at least 24 hours. A breath alcohol concentration of 0.04 or greater will be considered a positive alcohol test.

## **A. GENERAL EMPLOYEES & SAFETY/SECURITY SENSITIVE EMPLOYEES (NON-DOT)**

### **1. Pre-Placement/Post Offer Controlled Substance (Drug) Testing (Safety/Security Sensitive Employees Only)**

An applicant for a safety/security sensitive position with the District will be required to undergo a drug screening analysis prior to employment. Any offer of employment will be conditioned upon compliance with this policy. The applicant will be requested to execute a consent form which includes a waiver and release. The "Controlled Substances Custody and Control Form" will be completed by the applicant and collection center at the time of collection. A positive test indicating the presence of controlled substances as defined in this policy will constitute disqualification of the applicant for the position.

### **2. Reasonable Suspicion Testing (General and Safety/Security Sensitive Employees)**

A drug and/or alcohol test shall be conducted when a manager or supervisor has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse.

The determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor, or other company official, who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.

If an alcohol test is not administered within two hours following the determination to conduct a reasonable suspicion test, the supervisor shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test is not administered within eight hours following the determination to test, cease attempts to administer an alcohol test and update the record with the reasons for not administering the test.

A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the supervisor or company official who made the observations, within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

- a. Reasonable suspicion testing may be based upon, among other things:
- 1) Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug.
  - 2) A pattern of abnormal conduct or erratic behavior.
  - 3) Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking.
  - 4) Adequate documentation of unsatisfactory work performance or on-the-job behavior.
  - 5) Physical signs and symptoms consistent with prohibited substance use.
  - 6) Occurrence of a serious or potentially serious accident that may have been caused by human error.
  - 7) Fights (to mean physical contact), assaults and flagrant disregard or violations of established safety, security, or other operation procedures.

Reasonable suspicion determinations will be made by a manager or supervisor who is trained to detect the signs and symptoms of controlled substance and alcohol use and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to prohibited substance abuse or misuse. (**See Appendix F – “Reasonable Suspicion Documentation Form”**).

- b. Employees reasonably believed to be under the influence of drugs or alcohol will not be permitted to engage in further work. In addition, such employees will not be permitted to drive themselves from the worksite. A supervisor, Human Resources Representative or Safety Representative will see that the employee is transported to the designated collection center (**See Appendix B – “Collection Center Location”**).
- c. A controlled substance test is considered positive when a verified confirmation test indicates specimens have concentrations of a particular class of drug above the specified concentration levels. Drug classes and threshold concentration levels are listed in the “Controlled Substance (Drug) Test” Definition Section of this policy.
- d. An alcohol test is considered positive when a verified confirmation test indicates a breath alcohol content greater than 0.04. “Alcohol Concentration Level” is defined in the Definition Section of this policy.



### **3. Manager / Supervisor Training**

Supervisors and managers will receive at least 60 minutes of training on alcohol misuse and at least 60 minutes of training on controlled substances use. The training will be used by the supervisors and/or managers to determine whether reasonable suspicion exists to require an employee to undergo testing. The training will include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

## **B. SAFETY-SENSITIVE / DOT-COVERED EMPLOYEES**

The adverse impact of substance abuse by drivers has been recognized by the federal government. The Federal Motor Carrier Safety Administration (FMCSA) has issued regulations which may require OCWD to implement a controlled substance testing program. OCWD will comply with these regulations and is committed to maintaining a drug-free workplace. All drivers are advised that remaining drug-free and medically qualified to drive are conditions of continued employment with OCWD.

### **1. Covered Employees**

This policy applies to every employee whose position requires the possession of a commercial driver's license (CDL); every employee performing a "safety-sensitive function" as defined herein, and any person applying for such positions.

Under FMCSA, an employee is performing a safety sensitive function if they are:

- a. Driving a commercial motor vehicle which requires the driver to have a commercial driver's license (CDL)
- b. Inspecting, servicing, or repairing any commercial motor vehicle
- c. Waiting to be dispatched to operate a commercial motor vehicle
- d. Performing all other functions in or upon a commercial motor vehicle
- e. Loading or unloading a commercial motor vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments being loaded or unloaded
- f. Performing driver requirements associated with an accident.
- g. Repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle.

A volunteer is a covered employee if:

- a. The volunteer is required to hold a commercial driver's license to operate the vehicle; or

- b. The volunteer performs a safety-sensitive function for an entity subject to this part and receives remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity.

## **2. Testing Procedure**

All testing will be conducted as required in 49 CFR Parts 40 and 382, as amended.

## **3. Pre-Placement/Post Offer Controlled Substance (Drug) Testing**

- a. A negative pre-employment drug test result is required before an employee can first perform safety-sensitive duties.
- b. An applicant for a safety-sensitive position with the District will be required to undergo a drug screening analysis after an offer of employment has been made but before the applicant begins work for the District. Any offer of employment will be conditioned upon compliance with this policy.
- c. A positive test indicating the presence of controlled substances as defined in this policy may constitute disqualification of the applicant for the position. The District will notify disqualified applicants of the results of a drug test conducted under the DOT regulations if the driver requests the result within 60 days of being notified of the disposition of the employment application.
- d. An employer is not required to administer a pre-employment controlled substances test if:
  - 1. The driver has participated in a controlled substances testing program that meets the requirements of this part within the previous 30 days; and
  - 2. While participating in that program, either:
    - a) Was tested for controlled substances within the past 6 months (from the date of application with the employer), or
    - b) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the employer); and
    - c) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months.

e. Pre-placement controlled substances tests will also be required for:

1. Existing District employees who newly obtain a Commercial Driver's License or a Hazardous Materials Endorsement to haul hazardous materials (e.g., gaseous chlorine, propane) and will be using these licenses to perform safety sensitive functions within their job description;
2. Existing District employees who are promoted to positions that require a Commercial Driver's License or a Hazardous Materials Endorsement to haul hazardous materials (e.g., gaseous chlorine, propane) and will be using these licenses to perform safety sensitive functions within their job description;
3. Applicant's whose job descriptions include safety sensitive functions that are subject to DOT guidelines and have not been part of a drug program that complies with the FMCSA regulations for the previous 30 days; and
4. Existing District employees who are newly subject to a recently implemented District program and have not been tested for controlled substances in the previous six months or have not participated in a random drug and/or alcohol testing program for the previous 12 months.

f. Prior Employment Drug and Alcohol Testing Records

The District will make a good faith effort to obtain previous test information from the last three years from an applicant's previous employers. In this context, a good faith effort includes completing the **"Request for Past Test Results Form" (Appendix C)**, enclosing the **"Release of Information Form" (Appendix D)**, and sending the forms to each of the employers listed on the application in order to obtain the information from the previous three years. If there is no reply, a follow up phone call will be made in a further attempt to obtain the information. All requests will be documented and kept on file.

The District will review previous test information collected from prior employers for the following:

1. Alcohol test results with a breath alcohol concentration of 0.04 or greater;
2. Positive drug test results; and
3. Refusals to submit to a required alcohol or drug test.

If the District learns that the applicant tested positive for drugs, had an alcohol test result of 0.04 or greater, or refused to be tested, the applicant will not be allowed to perform safety sensitive functions until the District has evidence that the driver has met the return-to-duty requirements. The District will obtain evidence that the applicant was

evaluated by a SAP, completed any required counseling, passed a return-to-duty test, and was subject to any required follow up testing.

#### 4. FMCSA: Clearinghouse

Any commercial motor vehicle driver for the Orange County Water District, (herein referred to as "OCWD") who is subject to the FMCSA'S drug and alcohol testing regulations in 49CFR Part 382 must also comply with the CDL Driver Drug & Alcohol Clearinghouse regulations in Part 382, Subpart G.

OCWD is prohibited from allowing any driver that has committed a testing violation and has not completed the return-to-duty process as outlined in the District's DOT Drug & Alcohol Policy to perform safety-sensitive functions. Drivers will be notified by FMCSA when the District obtains information from the Clearinghouse regarding their violation, or when information concerning the driver is added, revised, or removed.

**Reporting:** The following violations or milestones, on or after January 6, 2020, will be reported to the Clearinghouse for any Drivers who are subject to the Clearinghouse rules. The Company, its service providers, its Medical Review Officer(s), and/or its Substance Abuse Professional(s) as required by FMCSA directive to report:

- Any verified positive, adulterated, or substituted DOT drug test
- Any validated DOT alcohol test result of 0.04 or higher
- Any refusal to submit to a DOT required drug or alcohol test
- Any confirmed and recorded "actual knowledge" that the driver violated the DOT drug or alcohol rules, including:
  - Any on-duty alcohol use, including any citation for driving under the influence of alcohol (DUI / DWI) while driving a commercial motor vehicle
  - Any alcohol use within 4 hours before going on duty
  - Any alcohol use within 8 hours of an accident or before a post-accident test is complete (whichever occurs first)
  - Any prohibited drug use while on duty
- Successful completion of the return-to-duty process following treatment from any negative DOT return-to-duty test\*
- Successful completion of follow-up testing\*

*\*Only reported if the primary violation occurred on or after January 6, 2020.*

**Granting of Consent:** Drivers must grant consent for the District to purchase Clearinghouse reports:

- Prior to employment with the Company, all drivers must create a Clearinghouse account and log in to permit the Company consent to acquire a "full" report.
- Drivers must sign a separate Consent "for Limited Queries" form allowing the District access to "limited" queries each year. Drivers may limit the length of time that such consent is valid but making it valid for the duration of employment with OCWD is recommended.
- OCWD will notify the driver that they must immediately log in to the Clearinghouse to provide permission so OCWD may obtain the driver's full

Clearinghouse record if a limited query exposes information about the driver. Such record will be acquired within 24 hours of the limited query.

A driver who refuses to grant the consent described above will not be allowed to perform any safety-sensitive duties as defined in §382.107. The driver will not be allowed to resume the safety-sensitive duties until the driver has granted the mandatory consent, OCWD then obtains the report, and the Clearinghouse query shows that the driver is eligible to carry out safety-sensitive duties.

**Driver Accounts:** Drivers are required to have an online account at *clearinghousefmcsa.dot.gov* and are highly encouraged to provide an email address so they may be contacted. Drivers are permitted to see their own Clearinghouse records free of charge and may challenge the accuracy of information reported to the Clearinghouse, but not the accuracy of test results or refusals using the procedures listed in §382.717.

**Queries:** OCWD will purchase reports (a.k.a. queries) from the Clearinghouse at these times:

- Once a year for all drivers, and
- Preceding employment of any new drivers.

Reports to the Clearinghouse will include:

- the driver's name
- date of birth
- commercial driver's license number and state of issuance
- violation and/or testing data

**Notice of Violations:** Drivers are required to notify OCWD in writing if they have violated the drug and/or alcohol prohibitions of 49 CFR Parts 40 or 382 while employed with OCWD. The statement must be received before the end of the business day the day after the driver received notification of the violation or prior to performing any safety-sensitive duties, whichever comes first.

**Use of Information:** OCWD will only use the information obtained from the Clearinghouse to determine if the driver is prohibited from performing safety-sensitive duties. OCWD will not divulge, nor permit any other person or entity to divulge, any driver-specific information from the Clearinghouse to any person or entity not directly involved in making such determination.

## 5. Reasonable Suspicion Testing

A drug and/or alcohol test shall be conducted when a manager or supervisor has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse.

The determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor, or other company official, who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.

A covered employee may be directed to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

If an alcohol test is not administered within two hours following the determination to conduct a reasonable suspicion test, the supervisor shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test is not administered within eight hours following the determination to test, cease attempts to administer an alcohol test and update the record with the reasons for not administering the test.

A written record shall be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the supervisor or company official who made the observations, within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

- a. Reasonable suspicion testing may be based upon, among other things:
  - 1) Observable phenomena, such as direct observation of drug use or possession and/or the physical symptoms of being under the influence of a drug.
  - 2) A pattern of abnormal conduct or erratic behavior.
  - 3) Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking.
  - 4) Adequate documentation of unsatisfactory work performance or on-the-job behavior.
  - 5) Physical signs and symptoms consistent with prohibited substance use.
  - 6) Occurrence of a serious or potentially serious accident that may have been caused by human error.
  - 7) Fights (to mean physical contact), assaults and flagrant disregard or violations of established safety, security, or other operation procedures.
  
- b. Reasonable suspicion determinations will be made by a manager or supervisor who is trained to detect the signs and symptoms of controlled substance and alcohol use and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to prohibited substance abuse or misuse. The manager or supervisor requesting an employee to submit to a drug or alcohol test based on reasonable suspicion must document facts constituting reasonable suspicion in writing (**See Appendix F –**

### **Reasonable Suspicion Documentation Form).**

- c. Employees reasonably believed to be under the influence of drugs or alcohol will not be permitted to engage in further work. In addition, such employees will not be permitted to drive themselves from the worksite. A supervisor, Human Resources Representative or Safety Representative will see that the employee is transported to the designated collection center (**See Appendix B – “Collection Center Location”**).
- d. A controlled substance test is considered positive when a verified confirmation test indicates specimens have concentrations of a particular class of drug above the specified concentration levels. Drug classes and threshold concentration levels are listed in the “Controlled Substance (Drug) Test” Definition Section of this policy.
- e. An alcohol test is considered positive when a verified confirmation test indicates a breath alcohol content greater than 0.04. “Alcohol Concentration Level” is defined in the Definition Section of this policy.

## **6. Random Testing**

Random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year.

Random testing must be conducted at all times of day when safety-sensitive functions are performed.

The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

Annually, at least 50% of the pool will be randomly tested for drugs, and at least 10% of the pool will be tested for alcohol, in accordance with DOT regulations. Testing rates will meet or exceed the minimal annual percentage rate set each year by the DOT Administrator.

The pool administrator will notify the District's designated employer representative at the beginning of the quarter if any District employees are selected with the computerized random number generator. The supervisor then has the entire quarter to send the selected employee to the designated collection center or arrange for an on-site collection (**See Appendix B – “Collection Center Location”**).

Each employee selected for testing shall be tested during the selection period. A covered employee shall only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

Each covered employee who is notified of selection for random drug or random alcohol testing shall proceed to the test site immediately.

In the event an employee, who is selected for a random test, is on vacation, laid off, or on an extended medical absence during the quarter of selection, an alternate employee will be randomly selected, and the unavailable employee will be put back into the pool for the next quarter. When this occurs, the District will keep documentation that the driver was ill, injured, laid off, or on vacation and that the employee was in the random selection pool for that cycle.

## 7. Post-Accident Testing

- a. A supervisor shall be notified immediately following an accident to ensure proper post-accident instructions. The supervisor will determine if a test is necessary (**See Appendix E – Post-Accident Drug and Alcohol Testing Decision Form**). If a test is necessary, the supervisor will see that the driver is transported to the appropriate collection center (**See Appendix B – “Collection Center Location”**).
- b. As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road, each employer shall test for alcohol for each of its surviving drivers:
  - 1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
  - 2) Who receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
    - a) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
    - b) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
- c. As soon as practicable following an occurrence involving a



commercial motor vehicle operating on a public road in commerce, each employer shall test for controlled substances for each of its surviving drivers:

- 1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
- 2) Who receives a citation within thirty-two hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved:
  - a) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - b) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

**The following table notes when a post-accident test is required to be conducted.**

Type of accident involved	Citation issued to Commercial Motor Vehicle Driver?	Alcohol and controlled substance test required
i. Human fatality	Yes	Yes
	No	Yes
ii. Bodily injury and immediate medical treatment away from the scene.	Yes	Yes
	No	No
iii. Disabling damage to any motor vehicle requiring tow away	Yes	Yes
	No	No

- c) If a post-accident alcohol test is not administered within two (2) hours following an accident, the supervisor of the employee shall prepare and maintain on file a record stating the reasons the test was not properly administered. If a test is not administered within eight (8) hours after the accident, the supervisor shall cease attempts to have the alcohol test administered, and prepare and maintain on file a record stating the reasons the test was not done within said eight (8) hours.
- d) If a post-accident controlled substances test is not administered within 32 hours of the accident, the supervisor shall cease attempts to

have the controlled substances test administered, and prepare and maintain on file a record stating the reasons the test was not done within said 32 hours.

- e) An employee subject to post-accident testing shall remain readily available for such testing, including notifying his/her supervisor of his/her location if he/she leaves the accident scene. An employee who fails to do so shall be deemed to have refused to submit to testing.
- f) An employee who knowingly, willingly, or purposely evades a post- accident alcohol or controlled substance test will be subject to termination under "Refusal to Submit" guidelines as outlined under definitions in this policy.
- g) Nothing herein shall be construed to require the delay of necessary medical attention for the injured or to prohibit an employee from leaving the accident scene for the time period required to obtain emergency assistance.

#### **8. Manager / Supervisor Training**

Supervisors and managers will receive at least 60 minutes of training on alcohol misuse and at least 60 minutes of training on controlled substances use. The training will be used by the supervisors and/or managers to determine whether reasonable suspicion exists to require an employee to undergo testing. The training will include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

#### **XII. REFUSAL TO SUBMIT**

Any employee who refuses to submit to a drug or alcohol test immediately when requested by a supervisor or law enforcement personnel will be treated in the same manner as an employee who has failed an alcohol or controlled substance test, as defined in this policy. No applicant who refuses to be tested will be extended an offer of employment. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required.

#### **XIII. FAILURE TO APPEAR FOR TESTING**

Failure to appear for testing without a deferral will be considered refusal to participate in testing and will subject an employee to the range of disciplinary actions, including dismissal, and an applicant to the cancellation of an offer of employment. If an individual fails to appear at the collection site at the assigned time, the collector will contact the Designated Employer Representative (DER).

#### **XIV. VIOLATION OF POLICY AND DISCIPLINARY CONSEQUENCES**

An employee may be found to use illegal drugs or alcohol on the basis of any appropriate evidence including, but not limited to:

- Direct observation;
- Evidence obtained from an arrest or criminal conviction;
- A verified positive test result; or
- An employee's voluntary admission.

The District will refer an employee found to use illegal drugs or alcohol to the Substance Abuse Professional and immediately remove the employee from their position. Disciplinary action taken against an employee found to use illegal drugs or alcohol may include the full range of disciplinary actions, including termination. The severity of the action chosen will depend on the circumstances of each case. At the discretion of the District, and as part of SAP counseling, an employee may return to duty if the employee's return would not endanger public health or safety.

The terms and conditions of the disciplinary consequences, if any, utilized by the district will not expand the rights and limitations of the employee under the "at will" provision of the employee handbook or the terms and conditions of any MOU between the District and the employee association.

A rehabilitation program may be available for those employees having a positive controlled substance and/or alcohol test. A second verified positive test under any circumstances might constitute cause for immediate termination. Failure to complete a treatment program provided by the Substance Abuse Professional (SAP) will be treated as a second positive test.

The employee will pay rehabilitation program costs and subsequent controlled substance and/or alcohol costs related to return-to-work and follow-up testing. When recommended by the SAP, participation in and completion of the rehabilitation program is mandatory. Prior to return-to-duty testing, an employee must follow the rehabilitation program recommended by the SAP and agree to sign a return-to-duty agreement. The duration and frequency of follow-up testing will be determined by the SAP but will not be shorter than one year or longer than five years.

NOTE: Health insurance plans may provide coverage for rehabilitation costs. Health benefits information can be obtained from the District's human resources contact.

#### **XV. EMPLOYEE RIGHTS**

Upon request, the employee will receive a full copy of any test results and

related documentation of the testing process.

All confirmed positive samples will be retained by the testing laboratory in secure frozen storage for one year following the test or until the sample is no longer needed for appeal proceedings or litigation, whichever is longer.

## **XVI. REHABILITATION / RETURN-TO-DUTY**

Following a positive drug or alcohol (BAC at or above 0.04) test result or test refusal, the employee is immediately removed from their duties, referred to a substance abuse professional (SAP), and may be subject to disciplinary action up to and including termination.

Following a BAC of 0.02 or greater, but less than 0.04 – the employee is immediately removed from duties until the start of the next regularly scheduled duty period, but not less than 24 hours following administration of the test.

### **A. Rehabilitation**

After a verified positive test result, a conference will be conducted between the employee and a human resource contact. If warranted, the employee will be requested to participate in a substance abuse rehabilitation program developed by a SAP chosen by the District. Details will be outlined in a Return-to-Duty Agreement.

Employees must use accumulated sick leave, vacation time, and compensatory time to participate in a rehabilitation program. Program costs and subsequent controlled substance and/or alcohol-testing costs will be paid by the employee. Failure to participate in and complete such a program may result in employment termination.

### **B. Return-to-Duty**

Employees who have violated the prohibition set forth in this policy will be required to submit to a return-to-duty test before returning to their position.

The test result must indicate an alcohol concentration of less than 0.02 and/or a verified negative result on a controlled substance test.

### **C. Follow-Up Testing**

After the return-to-duty test, employees will be subject to unannounced follow-up testing. A SAP will determine the number and frequency of tests, but at least six tests will be performed during the first 12 months following the employee's return to duty. Follow-up testing may be extended up to 60

months from the date of the employee's return to duty, but the SAP can terminate the requirement after the first six tests, if they determine that testing is no longer necessary. The SAP, in coordination with the Drug Program Administrator, will conduct tracking and monitoring of follow-up tests.

## **XVII. RECORDKEEPING**

### **A. Maintenance of Records**

The District will maintain records of its alcohol misuse and controlled substances use prevention programs. The records will be maintained in a secure location with controlled access. The District will maintain the records in accordance with the following schedule:

One Year – Records of negative and cancelled controlled substances test results and alcohol test results with a concentration of less than 0.02.

Two Years – Records relating to the alcohol and controlled substances collection process.

Five Years – The following records will be maintained for a minimum of five years:

- Alcohol results indicating an alcohol concentration of 0.02 or greater.
- Records of verified positive controlled substances test results.
- Documentation of refusals to take required alcohol and/or controlled substances tests.
- Driver evaluation and referrals.
- A copy of each annual calendar year summary.

### **B. Confidentiality**

The District will maintain records of the circumstances and results of any employee testing under this policy. These records, and any other information pertaining to an employee's drug or alcohol test, will be considered confidential and will be released only to:

1. The employee who was tested or other individuals designated in writing by that employee;
2. The Medical Review Officer; or
3. Individuals who need the records or information to:
  - a. Properly supervise or assign the employee;
  - b. Determine, or assist in determining, what action the District should take in response to the test results; or
  - c. Respond to appeals or litigation arising from the drug or alcohol

test or related actions.

## **XVIII. DEFINITIONS**

**Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl or isopropyl alcohol.

**Alcohol Concentration** means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this regulation. For example, 0.02 means 0.02 grams of alcohol in 210 liters of expired deep lung air. Blood tests will not be used to determine alcohol concentration, unless administered by on-site police or public safety officials in a post accident situation.

**Applicant** means any individual tentatively selected—

1. For employment with the District; or
2. For a Safety-Sensitive Position, and who has not, immediately prior to the selection, been subject to random testing.

**Breath Alcohol Technician (BAT)** means a person trained to operate the Evidential Breath Testing (EBT) device that the technician is using in the alcohol testing procedures. BATs are the only qualified personnel to administer the EBT tests.

**Chain of Custody** means the procedures to account for the integrity of each urine specimen by tracing its handling and storage from point of collection to final disposition.

**Collection Site** means a place designated by the District where individuals present themselves for the purpose of providing a specimen of either urine and/or breath.

**Confirmation Test** for alcohol testing means a second test, following a screening test with a result of 0.02 or greater that provides quantitative data of alcohol concentration. For controlled substances testing, it means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test, in order to ensure reliability and accuracy. Gas Chromatography/Mass Spectrometry (GC/MS) is the only authorized confirmation method of cocaine, marijuana, opiates, amphetamines, and phencyclidine.

**Consortium/Third-Party Administrator (C/TPA)** is a service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employer's drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who

join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members.

**Controlled Substance (Drug) Test** is a method of detecting and measuring the presence of controlled substances, whether legal or illegal, in a person's body. A controlled substance test may be either an initial test or a confirmation test. An initial controlled substance test is designed to identify specimens having concentrations of a particular class of drug above a specific concentration level. It eliminates negative specimens from further consideration. A confirmation drug test is a second analytical procedure to detect the presence of a specific drug or its metabolite. The confirmation procedure is conducted independent of the initial test and uses a different technique and chemical principal in order to confirm reliability and accuracy.

**Beginning January 1, 2018, in addition to the existing DOT drug testing panel, you will also be tested for four semi-synthetic opioids (i.e., hydrocodone, oxycodone, hydromorphone, and oxymorphone). Some common names for these semi-synthetic opioids include OxyContin®, Percodan®, Percocet®, Vicodin®, Lortab®, Norco®, Dilaudid®, and Exalgo®.**

Controlled substances will be tested under the Department of Health and Human Service guidelines. The cutoff concentrations below are for initial and confirmation drug tests:

Drug Test	Screening Level	Positive Test Chemistry	Confirmation Cutoff Level
Marijuana metabolites	50 ng/mL	THCA <sup>1</sup>	15 ng/mL.
Cocaine metabolites	150 ng/mL	Benzoyllecgonine	150 ng/mL.
Opiate metabolites	2000 ng/ml		2000 ng/ml
Codeine/Morphine <sup>2</sup>	2000ng/mL	Codeine	2000 ng/mL.
		Morphine	2000 ng/mL.
6–Acetylmorphine	10 ng/mL	6–Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamines <sup>3</sup>	500 ng/mL		250 ng/mL
AMP/MAMP <sup>4</sup>	500 ng/mL	Amphetamine	250 ng/mL.
		Methamphetamine <sup>5</sup>	250 ng/mL.
MDMA <sup>6</sup>	500 ng/mL	MDMA	250 ng/mL.
	MDA	MDA <sup>7</sup>	250 ng/mL.

Hydrocodone, Oxycodone	100		100 ng/mL.
Hydromorphone, Oxymorphone	100		100 ng/mL.

<sup>1</sup>Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA).

<sup>2</sup>Morphine is the target analyte for codeine/morphine testing.

<sup>3</sup>Either a single initial test kit or multiple initial test kits may be used provided the single test kit detects each target analyte independently at the specified cutoff.

<sup>4</sup>Methamphetamine is the target analyte for amphetamine/methamphetamine testing.

<sup>5</sup>To be reported positive for methamphetamine, a specimen must also contain amphetamine at a concentration equal to or greater than 100 ng/mL.

<sup>6</sup>Methylenedioxymethamphetamine (MDMA).

<sup>7</sup>Methylenedioxyamphetamine (MDA).

**Department of Transportation (DOT) Guidelines** means the controlled substances and alcohol testing procedures in all transportation industries (49 CFR, Part 40) and for the Federal Motor Carrier Safety Administration (49 CFR, Part 382).

**Employee Assistance Program (EAP)** means a counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment.

**Evidential Breath Testing Device (EBT)** means the device to be used for breath alcohol testing.

**Medical Review Officer** means the individual responsible for receiving laboratory results generated from the District's Drug and Alcohol Program who is a licensed physician with knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate all positive test results together with an individual's medical history and any other relevant biomedical information.

**Illegal Drugs** means a controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term "illegal drugs" does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

**Performing Safety Sensitive Function** means an employee is considered to be performing a safety sensitive function in any period in which they are actually performing, ready to perform, or immediately available to perform such functions.

**Post Accident Alcohol and/or Controlled Substance Testing** is testing performed on safety-sensitive employees following an accident involving



a commercial motor vehicle where:

1. The accident involved a fatality; or
2. The driver receives a citation under state or local law for a moving traffic violation arising from an accident that involved:
  - a. injury requiring medical treatment away from the scene; or
  - b. one or more vehicles having to be towed from the scene.

**Pre-Employment Controlled Substance Testing** is conducted before applicants begin work, but after an offer to hire. It is also conducted when existing District employees are transferred to a safety sensitive position.

**Random Controlled Substance and/or Alcohol Testing** means a system of testing imposed without individualized suspicion that a particular individual is using illegal drugs. Testing is conducted on a random, unannounced basis for safety sensitive employees just before, during, or just after performing a safety sensitive function.

**Reasonable Suspicion Controlled Substance and/or Alcohol Testing** is conducted when a trained supervisor has a good faith belief based on specific, contemporaneous, and articulable facts or evidence that an employee may have violated the prohibitions set forth this policy.

**Refusal to Submit** means failing to provide an adequate breath or urine sample for testing without a valid medical explanation or engaging in conduct that clearly obstructs the testing process (i.e., verbal declarations, obstructive behavior, or physical absence resulting in the inability to conduct the test.)

**Safety-Sensitive Employee** is defined as an employee possessing a commercial driver's license and as a part of their job description may operate any of the following vehicles:

1. A vehicle with a gross vehicle weight rating (GVWR) of at least 26,001 pounds;
2. A vehicle with a gross combination weight of at least 26,001 pounds inclusive of a towed unit with a gross vehicle weight rating (GVWR) of more than 10,000 pounds;
3. A vehicle designed to transport 16 or more passengers, including the driver; or
4. A vehicle used to transport a hazardous material that requires placards.

**Substance Abuse Professional (SAP)** means a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker (with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders (the license alone does not authorize this), Certified Employee Assistance Professional (CEAP), or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances related

disorders.

**Trained Supervisor** means a person in authority who received at least one hour of training on the signs and symptoms of alcohol abuse and at least one hour of training on the signs and symptoms of controlled substance abuse.

# **Drug and Alcohol Program**

## **Appendices**

- A Alcohol and Drug Effects**
- B Collection Center Locations**
- C Request for Past Test Results**
- D Release of Information Form**
- E Post-Accident Drug and Alcohol Testing Decision Form**
- F Reasonable Suspicion Documentation Form**
- G Drug and Alcohol Testing Program Acknowledgment Form**
- H Certificate of Receipt of DOT Drug and Alcohol Program**

## **APPENDIX A**

### **ALCOHOL AND DRUG EFFECTS**

Section 382.601(b)(11) FMCSR mandates that all employees be provided with training material discussing the effects of alcohol and controlled substance use on an individual's health, work, and personal life.

This attachment is intended to help individuals understand the personal consequences of substance abuse.

#### **ALCOHOL**

Although used routinely as beverage for enjoyment, alcohol can also have negative physical and mood-altering effects when abused. These physical or mental alterations in a driver may have serious personal and public safety risks.

#### **Health Effects**

An average of three or more servings per day of beer (12 ounces), whiskey (1 ounce), or wine (6 ounces) over time, may result in the following health hazards:

- \* Dependency
- \* Fatal liver diseases
- \* Kidney failure
- \* Pancreatitis
- \* Ulcers
- \* Decreased sexual function
- \* Increased cancers of the mouth, pharynx, esophagus, rectum, breast, and malignant melanoma
- \* Spontaneous abortion and neonatal mortality
- \* Birth defects

#### **Workplace Issues**

- \* It takes one hour for the average person (150 pounds) to process one serving of alcohol from the body.
- \* Impairment can be measured with as little as two drinks in the body.
- \* A person who is legally intoxicated is 6 times more likely to have an accident than a sober person.

### **ALCOHOL'S TRIP THROUGH THE BODY**

**Mouth and Esophagus:** Alcohol is an irritant to the delicate linings of the throat and food pipe. It burns as it goes down.

**Stomach and Intestines:** Alcohol has an irritating effect on the stomach's protective lining, resulting in gastric or duodenal ulcers. This condition, if it becomes acute, can cause peritonitis, or perforation of the stomach wall. In the small intestine, alcohol blocks absorption of such substances as thiamine, folic acid, fat, vitamin B1, vitamin B12, and amino acids.

**Bloodstream:** 95% of the alcohol taken into the body is absorbed into the bloodstream through the lining of the stomach and duodenum. Once in the bloodstream, alcohol quickly goes to every cell and tissue in the body. Alcohol causes red blood cells to clump together in sticky wads, slowing circulation and depriving tissues of oxygen. It also causes anemia by reduction red blood cell production. Alcohol slows the ability of white cells to engulf and destroy bacteria and degenerates the clotting ability of blood platelets.

**Pancreas:** Alcohol irritates the cells of the pancreas, causing them to swell, thus blocking the flow of digestive enzymes. The chemicals, unable to enter the small intestine, begin to digest the pancreas, leading to acute hemorrhagic pancreatitis. One out of five patients who develop this disease dies during the first attack. Pancreatitis can destroy the pancreas and cause a lack of insulin, thus resulting in diabetes.

**Liver:** Alcohol inflames the cells of the liver, causing them to swell and block the tiny anal to the small intestines. This prevents bile from being filtered properly through the liver. Jaundice develops, turning the whites of the eyes and skin yellow. Each drink of alcohol increases the number of live cells destroyed, eventually causing cirrhosis of the liver. This disease is eight times more frequent among alcoholics than among non- alcoholics.

**Heart:** Alcohol causes inflammation of the heart muscle. It has a toxic effect on the heart and causes increased amounts of fat to collect, thus disrupting its normal metabolism.

**Urinary Bladder and Kidneys:** Alcohol inflames the lining of the urinary bladder making it unable to stretch properly. In the kidneys, alcohol causes increased loss of fluids through its irritating effect.

**Sex Gland:** Swelling of the prostate gland caused by alcohol interferes with the ability of the male to perform sexually. It also interferes with the ability to climax during intercourse.

**Brain:** The most dramatic and noticed effect of alcohol is on the brain. It depresses brain centers, producing progressive lack of coordination: confusion, disorientation, stupor, anesthesia, coma, death. Alcohol kills brain cells and brain damage is permanent. Drinking over a period of time causes loss of memory, judgment and learning ability.

## **DRUGS**

### **Marijuana**

#### **Health Effects**

- \* Emphysema-like conditions.
- \* One joint of marijuana contains cancer-causing substances equal to 1/2 pack of cigarettes.
- \* One joint causes the heart to race and be overworked. People with heart conditions are at risk.
- \* Marijuana is commonly contaminated with the fungus *Aspergillus* which can cause serious respiratory tract and sinus infections.
- \* Marijuana lowers the body's immune system response, making users more susceptible to infection.
- \* Chronic smoking causes changes in brain cells and brain waves. The brain does not work as efficiently or effectively. Long-term brain damage may occur.
- \* Tetrahydrocannabinol (THC) and 60 other chemicals in marijuana concentrate in the ovaries and testes.
- \* Chronic smoking of marijuana in males causes a decrease in testosterone and an increase in estrogen, the female hormone. As a result, the sperm count is reduced, leading to temporary sterility.
- \* Chronic smoking of marijuana in females causes a decrease in fertility.
- \* A higher than normal incidence of stillborn babies, early termination of pregnancy, and higher infant mortality rate during the first few days of life is common in pregnant marijuana smokers.

- \* THC causes birth defects including brain damage, spinal cord, forelimbs, liver and water on the brain and spine in test animals.
- \* Prenatal exposure may cause underweight newborn babies.
- \* Fetal exposure may decrease visual functioning.
- \* User's mental function can display the following effects:
  - delayed decision making
  - diminished concentration
  - impaired short-term memory
  - impaired signal detection
  - impaired tracking
  - erratic cognitive function
  - distortion of time estimation

### Workplace Issues

- \* THC is stored in body fat and slowly released.
- \* Marijuana smoking has long-term effects on performance.
- \* Increased THC potency in modern marijuana dramatically compounds the side effects.
- \* Combining alcohol or other depressant drugs with marijuana increases the impairing effects of both.

### **Marijuana Use and the Compassionate Use Act of 1996**

The Compassionate Use Act of 1996, Health & Safety Code section 11362.5, does not exempt or otherwise immunize an employee or job applicant from compliance with the Orange County Water District Drug & Alcohol Policy and the consequences of positive detection of marijuana in accordance with this policy, even in cases where the marijuana use is for medical purposes on a physician's recommendation. *Ross v. Ragingwire Telecommunications, Inc.* (2008) 42 Cal.4th 920, 924, 927-932.

### **Cocaine**

Used medically as a local anesthetic. When abused, it becomes a powerful physical and mental stimulant. The entire nervous system is energized. Muscles tense, heart beats faster and stronger, and the body burns more energy. The brain experiences an exhilaration caused by a large release of neurohormones associated with mood elevation.

### **Health Effects**

- \* Regular use may upset the chemical balance of the brain. As a result, it may speed up the aging process by causing damage to critical nerve cells. Parkinson's disease could also occur.

- \* Cocaine causes the heart to beat faster, harder, and rapidly increases blood pressure. It also causes spasms of blood vessels in the brain and heart. Both lead to ruptured vessels causing strokes and heart attacks.
- \* Strong dependence can occur with one "hit" of cocaine. Usually mental dependency occurs within days for "crack" or within several months for snorting coke. Cocaine causes the strongest mental dependency of all the drugs.
- \* Treatment success rates are lower than with any other chemical dependency.
- \* Extremely dangerous when taken with other depressant drugs. Death due to overdose is rapid. Fatal effects are usually not reversible by medical intervention.

### Workplace Issues

- \* Extreme mood and energy swings create instability. Sudden noise causes a violent reaction.
- \* Lapses in attention and ignoring warning signals increases probability of accidents.
- \* High cost frequently leads to theft and/or dealing.
- \* Paranoia and withdrawal may create unpredictable or violent behavior.
- \* Performance is characterized by forgetfulness, absenteeism, tardiness, and missing assignments.

### Opiates

Narcotic drugs which alleviate pain and depress body functions and reactions.

### Health Effects

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

### Amphetamines

Central nervous system stimulant that speeds up the mind and body.

### Health Effects

- \* Regular use causes strong psychological dependency and increased tolerance.
- \* High doses may cause toxic psychosis resembling schizophrenia.
- \* Intoxication may induce a heart attack or stroke due to increased blood pressure.
- \* Chronic use may cause heart or brain damage due to severe constriction of capillary blood vessels.



- \* Euphoric stimulation increases impulsive and risk taking behavior, including bizarre and violent acts.
- \* Withdrawal may result in severe physical and mental depression.

#### Workplace Issues

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

#### **Phencyclidine (PCP)**

Often used as a large animal tranquilizer and abused primarily for its mood altering effects. Low doses produce sedation and euphoric mood changes. Mood can rapidly change from sedation to excitation and a blank stare. Sudden noises or physical shocks may cause a "freak out" in which the person has abnormal strength, violent behavior, and an inability to speak or comprehend.

#### Health Effects

- \* The potential for accidents and overdose emergencies is high due to the extreme mental effects combined with the anesthetic effect on the body.
- \* PCP, when combined with other depressants, including alcohol, increases the possibility of an overdose.
- \* If misdiagnosed as LSD induced, and treated with Thorazine, can be fatal.
- \* Irreversible memory loss, personality changes, and thought disorders may result.

#### Workplace Issues

- \* Not common in workplace primarily because of the severe disorientation that occurs.
- \* There are four phases to PCP abuse:
  - Acute toxicity causing combativeness, catatonia, convulsions, and coma. Distortions of size, shape, and distorted perception are common.
  - Toxic psychosis with visual and auditory delusions, paranoia, and agitation.
  - Drug induced schizophrenia.
  - Induced depression which may create suicidal tendencies and mental dysfunction.

## **APPENDIX B**

### Collection Center Location for Random Testing

#### Fountain Valley Employees

##### ProCare

17232 Red Hill Ave., Irvine, CA 92614

949.752.1111

#### East Edinger Industrial Urgent Care

1619 E. Edinger Ave. Santa Ana, CA 92705 (714) 542-8904

Open M – F 7:00am to 6:00pm, Sat 8:00am to 2:00pm

Or

#### Field Head Quarters Employees

##### MD Medical Clinic

1300 North Kraemer Blvd.

Anaheim, CA 92806

714.630.6363

Open M – F 7:30am to 6:00pm

##### Concentra

1045 N. Tustin Street

Orange, Ca 92867

714.288.8303

M – F: 7:00am to 6:00pm

Or

#### Prado Employees

Concentra 15302 El Prado Road, Bldg. A

Chino, CA 91710

(909) 393-7222

Open 24 hours a day, 7 days a week

**APPENDIX C**

**REQUEST FOR PAST TEST RESULTS**

Date

To:

From: Orange County Water District, Human Resources Department

RE: **Request to Obtain Past Drug/Alcohol Test Results**

\_\_\_\_\_ (Insert applicant's name) has advised us that he/she worked for your company as a driver, or that he/she applied to your company for work as a driver, during the previous three (3) years.

Regulations of the Federal Highway Administration require us to obtain from your company, and require your company to provide to us, information concerning the above-named driver's past drug/alcohol test results (including refusal to be tested).

In accordance with FHWA's regulations we are providing you with the driver's written authorization directing your company to provide us with the following information concerning this driver:

1. Alcohol test with a result of 0.04 or higher.
2. Verified positive drug tests.
3. Refusals to be tested.
4. Other violations of DOT agency drug and alcohol testing regulations.
5. Information obtained from previous employers of a drug and alcohol rule violation.
6. Documentation, if any, of completion of the return-to-duty process following a rule violation.

Please fill out section II-A of the Release of Information Form and send this information to:

Orange County Water District  
Attention: Human Resources  
18700 Ward Street

Fountain Valley, CA 92708

Or

Fax it to (714) 274-0393 (confidential fax)

**The information which you furnish will be treated as strictly confidential.**

Thank you for your cooperation.

Sincerely,

**APPENDIX D**

**“Release of Information Form -- 49 CFR Part 40 Drug and Alcohol Testing”**

**Section I. To be completed by the new employer, signed by the employee, and transmitted to the previous employer:**

Employee Printed or Typed Name: \_\_\_\_\_

Employee SS or ID Number: \_\_\_\_\_

I hereby authorize release of information from my Department of Transportation regulated drug and alcohol testing records by my previous employer, listed in *Section I-B*, to the employer listed in *Section I-A*. This release is in accordance with DOT Regulation 49 CFR Part 40, Section 40.25. I understand that information to be released in *Section II-A* by my previous employer, is limited to the following DOT-regulated testing items:

1. Alcohol tests with a result of 0.04 or higher;
2. Verified positive drug tests;
3. Refusals to be tested;
4. Other violations of DOT agency drug and alcohol testing regulations;
5. Information obtained from previous employers of a drug and alcohol rule violation;
6. Documentation, if any, of completion of the return-to-duty process following a rule violation.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**I-A.**

New Employer Name: **Orange County Water District** \_\_\_\_\_

Address: **18700 Ward Street** \_\_\_\_\_

**Fountain Valley, CA 92708** \_\_\_\_\_

Phone #: **(714) 378-3210** \_\_\_\_\_ Fax #: **(714) 274-0393** \_\_\_\_\_

Designated Employer Representative: **Kim Dusky or Stephanie Dosier or Lisa Wirtz** \_\_\_\_\_

**I-B.**

Previous Employer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_

Designated Employer Representative (if known): \_\_\_\_\_

**Section II. To be completed by the previous employer and transmitted by mail or fax to the new employer:**

**II-A.** In the three years prior to the date of the employee’s signature (in Section I), for DOT-regulated testing ~

- |   |                        |
|---|------------------------|
| 1. Did the employee have alcohol tests with a result of 0.04 or higher?                                   | YES ___ NO ___         |
| 2. Did the employee have verified positive drug tests?  | YES ___ NO ___         |
| 3. Did the employee refuse to be tested?  | YES ___ NO ___         |
| 4. Did the employee have other violations of DOT agency drug and alcohol testing regulations?             | YES ___ NO ___         |
| 5. Did a previous employer report a drug and alcohol rule violation to you?                               | YES ___ NO ___         |
| 6. If you answered “yes” to any of the above items, did the employee complete the return-to-duty process? | N/A ___ YES ___ NO ___ |

NOTE: If you answered “yes” to item 5, you must provide the previous employer’s report. If you answered “yes” to item 6, you must also transmit the appropriate return-to-duty documentation (e.g., SAP report(s), follow-up testing record).

**II-B.**

Name of person providing information in *Section II-A*: \_\_\_\_\_

Title: \_\_\_\_\_ Phone \_\_\_\_\_

#: \_\_\_\_\_ Date: \_\_\_\_\_

**APPENDIX E**

**Post-Accident Drug and Alcohol Testing Decision Form**

**Accident Information:**

Date of Accident \_\_\_\_\_ Time of Accident: \_\_\_\_\_

Location of Accident \_\_\_\_\_

Employee Name: \_\_\_\_\_

**Decision Questions:**

1. Was the employee operating a commercial motor vehicle? Yes \_\_\_\_\_ No \_\_\_\_\_

If NO, the test should not proceed under FMCSA testing rules. Local administrative rules may apply.

2. Was there a **fatality**? Yes \_\_\_\_\_ No \_\_\_\_\_

**If yes, DOT drug and alcohol testing required**

If there was **NO fatality**, answer the following questions:

3. Did the person performing safety-sensitive functions with respect to the vehicle **receive a citation** under State or local law for a moving traffic violation arising from the accident?

Yes \_\_\_\_\_ No \_\_\_\_\_

4. Did the accident involve **bodily injury** to any person who, as a result of the injury, immediately received medical treatment away from the scene of the accident?

Yes \_\_\_\_\_ No \_\_\_\_\_

Did one or more motor vehicles incur **disabling damage** as a result of the accident **requiring transportation away from the scene** by a tow truck or other motor vehicle?

Yes \_\_\_\_\_ No \_\_\_\_\_

- **If there was NO fatality AND you checked YES for QUESTION 3 AND either or both of the answers to QUESTION 4, a FMCSA Post-Accident DRUG and ALCOHOL test IS REQUIRED.**
- **If there was NO fatality AND you checked NO for QUESTION 3, a FMCSA Post-Accident DRUG and ALCOHOL test should not be administered.**

If **ALCOHOL testing is not conducted within 2 hours after the accident**, document the reason for the delay on the reverse side of this form. If no alcohol test is administered **within 8 hours**, cease all efforts to have the test administered and **update the documentation**.

If **DRUG test is not conducted within 32 hours after the accident**, cease all efforts to administer the drug test and document the reason why the test was not administered.

Reason the **ALCOHOL test was not conducted within 2 hours** of the accident.  
Update this statement if no test conducted within 8 hours.

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Reason the **DRUG test was not conducted within 32 hours** of the accident.

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Supervisor Name: \_\_\_\_\_

Supervisor Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Testing Clinic Location: \_\_\_\_\_

Date Arrived At Clinic: \_\_\_\_\_ Time: \_\_\_\_\_

## APPENDIX F REASONABLE SUSPICION DOCUMENTATION FORM

 Employee is reporting for duty

 Employee is already on duty

EMPLOYEE NAME:		DATE OF OBSERVATION:	
LOCATION:		TIME OF OBSERVATION	
		AM	AM
		FROM	TO
		PM	PM
<b>OBSERVED PERSONAL BEHAVIOR (CHECK ALL APPROPRIATE ITEMS)</b>			
BREATH: (Odor of alcoholic beverage)	<input type="checkbox"/> Strong <input type="checkbox"/> None	<input type="checkbox"/> Faint	<input type="checkbox"/> Moderate
EYES:	<input type="checkbox"/> <input type="checkbox"/> Bloodshot <input type="checkbox"/> Clear	<input type="checkbox"/> <input type="checkbox"/> Glassy <input type="checkbox"/> Heavy Eyelids	<input type="checkbox"/> <input type="checkbox"/> Normal <input type="checkbox"/> Fixed Pupils
SPEECH:	<input type="checkbox"/> Dilated Pupils <input type="checkbox"/> Confused <input type="checkbox"/> Slurred <input type="checkbox"/> Stuttering	<input type="checkbox"/> Mumbling <input type="checkbox"/> Good <input type="checkbox"/> Cotton Mouthed	<input type="checkbox"/> Thick Tongued <input type="checkbox"/> Fair <input type="checkbox"/> Mush Mouthed
ATTITUDE:	<input type="checkbox"/> Not Understandable <input type="checkbox"/> Excited <input type="checkbox"/> Indifferent <input type="checkbox"/> Care Free	<input type="checkbox"/> Combative <input type="checkbox"/> Talkative <input type="checkbox"/> Cocky	<input type="checkbox"/> Hilarious <input type="checkbox"/> Insulting <input type="checkbox"/> Sleepy
UNUSUAL ACTION:	<input type="checkbox"/> Cooperative <input type="checkbox"/> Hiccoughing <input type="checkbox"/> Fighting	<input type="checkbox"/> Profane <input type="checkbox"/> Belching <input type="checkbox"/> Crying	<input type="checkbox"/> Polite <input type="checkbox"/> Vomiting <input type="checkbox"/> Laughing
	<input type="checkbox"/> Other: <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/>
BALANCE:	<input type="checkbox"/> Falling <input type="checkbox"/> Swaying	<input type="checkbox"/> Needs Support <input type="checkbox"/> Other:	<input type="checkbox"/> Wobbling
WALKING:	<input type="checkbox"/> <input type="checkbox"/> Falling <input type="checkbox"/> Swaying	<input type="checkbox"/> <input type="checkbox"/> Staggering	<input type="checkbox"/> Stumbling
TURNING:	<input type="checkbox"/> Falling <input type="checkbox"/> Swaying	<input type="checkbox"/> Staggering <input type="checkbox"/> Hesitant	<input type="checkbox"/> Stumbling

ANY OTHER UNUSUAL ACTIONS OR STATEMENTS:

SUPERVISOR'S OPINION		
EFFECTS OF ALCOHOL/DRUG INTOXICATION	<input type="checkbox"/> NONE <input type="checkbox"/> SLIGHT <input type="checkbox"/> OBVIOUS <input type="checkbox"/> EXTREME	
OPERATION OF EQUIPMENT	<input type="checkbox"/> YES <input type="checkbox"/> NO	COMMENTS:
ADDITIONAL COMMENTS:		

Reasonable Suspicion Test Refused Yes  No  Date \_\_\_\_\_ Time \_\_\_\_\_  
 Reasonable Suspicion Test Performed Yes  No  Date \_\_\_\_\_ Time \_\_\_\_\_

Clinic: \_\_\_\_\_

Supervisor: \_\_\_\_\_ Signature of Supervisor \_\_\_\_\_  
 Date \_\_\_\_\_ Time \_\_\_\_\_

Witness: \_\_\_\_\_ Signature \_\_\_\_\_  
(if available and trained in Reasonable Suspicion)  
Date \_\_\_\_\_ Time \_\_\_\_\_

**APPENDIX F-1**



**APPENDIX G**

**DRUG AND ALCOHOL TESTING PROGRAM  
ACKNOWLEDGMENT FORM**

I, \_\_\_\_\_, have received a copy, read and understand the Drug and Alcohol Testing Program policy and its supporting documents. I consent to submit to the drug and alcohol testing program as required by the Drug and Alcohol Program policy, its supporting documents and the law.

(FOR SAFETY-SENSITIVE CLASSIFICATIONS) I hereby certify that I have received, read and understand the materials listed above regarding the DOT/FMCSA 49 CFR Part 40 & Part 382 Regulations on Controlled Substances and Alcohol Use and Testing and all other applicable operating administration rules.

**ANY EMPLOYEE WHO REFUSES TO COMPLY WITH THE REQUIREMENTS OF THE DRUG & ALCOHOL TESTING POLICY MAY BE SUBJECT TO DISCIPLINARY ACTION UP TO AND INCLUDING TERMINATION.**

**DO NOT SIGN THIS ACKNOWLEDGEMENT FORM UNTIL YOU HAVE READ, UNDERSTAND, AND AGREE TO COMPLY WITH THE POLICY PROVISIONS LISTED ABOVE.**

Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**APPENDIX H**

**CERTIFICATE OF RECEIPT OF DOT DRUG AND ALCOHOL PROGRAM**

I certify that I have received, read and understand [agency's] policies, procedures and education materials required by the Department of Transportation. Specifically, I certify that I have received detailed information setting forth:

- (1) The identity of the person designated to answer questions about these materials;
- (2) Who is covered by the regulations;
- (3) Information on what period of the work day I am required to be in compliance with the regulations;
- (4) Specific information concerning what is prohibited by the regulations and by [agency] policy;
- (5) The circumstances under which I will be tested for alcohol and/or controlled substances under the regulations;
- (6) The procedures that will be used to testing for the presence of alcohol and controlled substances;
- (7) The requirement that I must submit to alcohol and/or controlled substances testing as required by the regulations and [agency] policy;
- (8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the consequences for refusing to submit to testing;
- (9) The consequences under the regulations and the consequences as a matter of [agency] policy if I violate the regulations, refuse to be tested and/or test positive, including the requirement that I be removed immediately from safety-sensitive functions;
- (10) The consequences if I test positive for alcohol at the level of 0.02 or greater but less than 0.04; and
- (11) Information concerning the effects of alcohol and controlled substances use on my health, work and personal life, and signs and symptoms of alcohol or controlled substances problems.

I understand that if I am concerned about my use of alcohol and controlled substances or the use of alcohol or controlled substances by a co-worker, I can and should seek assistance from [agency's] EAP or from any assistance program in my community. I further certify that as a condition of employment, I will comply with and abide by [agency's] policies, including the substance-abuse prevention policies and materials which I have received. I understand that I may have a copy of this Certificate if I so request.

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Employee's Signature

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Employee's Printed Name

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Witness' Signature

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Witness' Printed Name



# **ADDENDUM B**

## **Orange County Water District**

### **Technology Use Policy**





# ORANGE COUNTY WATER DISTRICT

Addendum B to the Personnel Manual

## TECHNOLOGY USE POLICY

### 1.0 PURPOSE

- 1.1 The purpose of this policy is to establish guidelines to protect the District's computers, networks, online services and communication systems (District Systems); to ensure a standard level of security; to establish an understanding of privacy and accepted uses; to protect information generated by or stored on District Systems; and to protect the District's investment in technology.
- 1.2 District Systems are business tools to be used in accordance with generally accepted business practices, current laws, regulations and compliance acts such as the California Public Records Act, PCI DSS, SB1386, Government Code section 11549, and Sarbanes-Oxley.
- 1.3 All District Systems are owned by the District. All elected or appointed officials, employees, contractors, consultants, and other non-employees (Users) that use these systems are covered by this policy.

### 2.0 POLICY

District Systems are made available to Users to assist in the pursuit of departmental and organizational goals. Systems will be defined as but not limited to any hardware including personal computers, handheld tablets and smartphones, host systems and servers, printers, scanners, digital cameras, disk drives, USB drives and network devices; as well as software and online services, Electronic Mail (email) and Messaging (collectively "Electronic Messaging"), remote access, and Internet connection tools deemed necessary to fulfill the duties required to provide responsible service to District customers. Users are expected to cooperate with each other to promote the most effective use of computing resources, and to respect each other's work even if it is in electronic rather than printed form. Individuals and departments will be held no less accountable for his or her actions involving District Systems than they would be expected to comply with other District policies.

#### 2.1 General Policy

- a. The use of District Systems for personal profit or gain, or any other activity not specific to the mission or duties of the users or District is prohibited.
- b. The use of District Systems for any illegal act, harassment, obscene or other purpose, which could expose the District to liability or cause an adverse public perception, is prohibited.
- c. The Information Services (IS) Department has primary responsibility for the installation, management, and support of all technology resources, with the exception of the Field Headquarters (FHQ) Supervisory Control and Data Acquisition (SCADA) system and the Advanced Water Production Facility (AWPF) Process Control System (PCS), collectively referred to as "Control Systems", which are supported by the Water Production staff.
- d. All data and other forms of electronic information, including Electronic Messaging that is stored on any type of media or online service provided by the District are the District's property. The District reserves the right to access and disclose all such stored



## ORANGE COUNTY WATER DISTRICT

Addendum B to the Personnel Manual

### TECHNOLOGY USE POLICY

information for any purpose at any time.

- e. Violation of any portion of the Technology Use Policy by any user of the District Systems could result in loss of access rights and disciplinary action, up to and including termination, in accordance with District Policy.

#### 2.2 Computer and Network Policy

- a. The IS staff or designee will coordinate all service, equipment, additions, changes, moves, and repairs for District Systems with the exception of the Control Systems that will be coordinated by the Water Production staff. All District Systems that are replaced for any reason must be surrendered to the IS staff upon replacement.
- b. Unauthorized access, alteration, deletion, damage, infection, or destruction of any District Systems is prohibited.
- c. The IS Department has established a standard configuration of computer hardware, software and online services issued or assigned to Users of the District Systems. Deviation by users from this standard configuration is prohibited unless approved by the IS Department.
- d. Requests for support and general questions should be initiated by using the IS Request System located on the District Intranet at <https://support.ocwd.com/>. Users should click on the help desk link and generate an IS Request. If access to your system or another system close by is not possible, then users may call the IS staff.
- e. Any material found on the District Systems that does not directly relate to the job duties of the employee and/or the employee's department will be deleted and the employee's supervisor and/or department manager notified.
- f. Users are encouraged to activate the password protected screen lock on their computers before leaving for an extended period of time (i.e., meetings, lunch, etc.). Computer equipment should not be left on overnight and should be completely powered off each evening, unless directed otherwise by IS staff, for example, when computers are likely to be updated by IS staff. Be sure to close all programs before powering off.
- g. Report any problems with District Systems to the IS staff immediately. Do not try to resolve any unfamiliar problems without their assistance. Do not answer any error messages on your screen if a problem occurs. If a problem does occur, please document what you were doing and when the problem started to facilitate IS staff assistance. Please provide as much detailed information as possible. Report Control System problems to Water Production staff.
- h. The District reserves the right to monitor all network traffic on District Systems and to modify and/or restrict access if necessary.
- i. The display of sexually explicit images, documents, or offensive material on District Systems is a violation of the District's harassment policy. This includes sexually explicit or offensive material accessed from or received through the Internet, email, or other electronic methods. In addition, sexually explicit or offensive material may not be archived, stored, distributed, edited, or recorded using District Systems.



## ORANGE COUNTY WATER DISTRICT

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### TECHNOLOGY USE POLICY

#### 2.3 Software Policy

- a. Users recognize that the computer programs, manuals, and other materials (“Materials”) supplied by the Owner to the District are subject to the proprietary rights and/or licensing of the Owner. Users acknowledge and agree that these Materials are trade secrets of the Owner, are protected by civil and criminal law, and by the law of copyright are very valuable to the Owner, and that their use and disclosure must be carefully and continuously controlled. All software used on the District Systems must be acquired, licensed, and approved by the IS Department. Software licenses, serial numbers and physical media if applicable must be maintained in a central location by the IS staff.
- b. Users may not copy District licensed software or data to another system or media without requesting and receiving approval of the IS staff prior to copying.
- c. Use of Materials furnished by the Owner to the District, and in turn by the District to its Users, shall be subject to the following restrictions:
  1. Only authorized District employees, authorized persons under contract by the District, or authorized persons working under the supervision of District employees will be permitted to use the Materials.
  2. Materials shall only be used internally for duties relating to District matters arising within the scope of employment with the District.
  3. Materials shall be used to support only systems operated by the District.
  4. With regard to use on local area networks or on multiple machines, employees shall use the software only in accordance with the license agreement and under the direction of the IS Staff.
- d. All software installations on District Systems must be installed or coordinated by IS staff. Control System applications will be installed or coordinated by Water Production staff. Users may not install any software onto District Systems. All software must be evaluated for compatibility by the IS staff prior to purchase.
- e. Employees agree to notify the Director of Information Services or his/her designee (Director) immediately of unauthorized possession, use, or knowledge of any District-licensed materials supplied by the Owner, or by any person or organization not authorized to have such possession, use, or knowledge. Users shall promptly furnish full details of such possession, use, or knowledge to the Director. Users recognize that the District will assist the Owner in preventing the recurrence of such possession, use, or knowledge, and will cooperate with the Owner in any litigation against these parties deemed necessary by the Owner to protect its proprietary rights.
  1. Employees violating this policy shall be subjected to disciplinary action by the District, including, but not limited to, termination of employment, in accordance with District Policy.
  2. The District shall be held harmless by the User for User’s unauthorized use, possession, or knowledge of Materials furnished by the Owner to the District



## ORANGE COUNTY WATER DISTRICT

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### TECHNOLOGY USE POLICY

if the unauthorized use, possession, or knowledge is not done or obtained with the knowledge and willful consent of the District with intent to harm the proprietary rights or to breach the contract rights of the Owner.

- f. Any software, including databases, custom reports, graphics, or other work product developed while using a District System or developed for use on the District network becomes the property of the District.

#### 2.4 Security Policy

- a. All District System Users are required to use personalized credentials composed of user IDs and passwords. The user ID will be assigned by the IS staff and follows the syntax of first initial and full last name unless specified otherwise. The Control System User IDs will be assigned by Water Production staff.
- b. Credentials represents a user in various system activities, provides access to certain software, data or online accounts based on his or her department-established authorization, and associates his or her own software, data or online account with his or her identity. As such, the User's credentials are another instrument of identity and their misuse may constitute forgery or misrepresentation. Assuming another person's identity or assuming an anonymous identity is expressly prohibited.
- c. A User's credentials are unique, identifying him or her as the user accessing District Systems. The User is responsible for any modifications or access to system information made using his or her credentials. Every change to computer information is subject to audit logging with the identification of the person who signed on with unique credentials. To protect against unauthorized use of equipment, each PC, workstation, or server left unattended should be logged off or otherwise secured from use. Screensavers with password enabled lock screens will be required on all District PCs, workstations, and servers.
- d. Passwords are confidential and must not be shared.
- e. Passwords are used for logging into the District Systems, using applications or online services, or accessing certain resources. Network passwords are set to expire periodically, as determined by the IS Department. The system will prompt users when a change is necessary. Users will be required to create a new password when prompted.
- f. Users of District Systems are responsible for understanding and exercising reasonable security precautions. These precautions include but are not limited to preserving the secrecy of credentials, checking external data files for viruses before using on a computer, deleting emails from unknown sources and avoiding harmful Internet links.
- g. IS staff may require a user to temporarily change his or her password for installation, diagnostic, repair, replacement, upgrade, or maintenance purposes. Once completed, the user is to immediately change it back to a unique and secure password.
- h. Virus protection and other anti-malware software is resident on each computer. Users will not disable this software. Users will notify the IS staff of any virus detected on their system.
- i. These security restrictions may be added to as required by federal, state, and local laws, compliance acts, and security organizations and departments the District is





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### TECHNOLOGY USE POLICY

mandated to adhere. These may include, but are not limited to, the California Public Records Act (CPRA), Payment Card Industry Data Security Standard (PCI DSS), California Senate Bill 1386 (SB1386), Sarbanes-Oxley Act (SOX), Government Code Section 11549, Government Code Section 6254 (a), Office of Information Security and Privacy Protection (OISPP), Federal Information Management Act (FISMA), Federal Privacy Act, Department of Homeland Security (DHS), American Water Works Association (AWWA), and NIST SP800-100.

#### 2.5 Electronic Messaging Policy

- a. All District provided Electronic Messaging is considered District records. The District reserves the right to access and use for business purposes the contents of all Electronic Messages sent over the District's Electronic Messaging systems. Employees should not expect or assume any privacy or confidentiality regarding the content of the District's Electronic Messaging.
- b. All District provided computers, Electronic Messaging facilities, and online service accounts are the District's property to be used solely to facilitate the business of the District. District Electronic Messaging systems may not be used to solicit others for commercial ventures, religious or political causes, outside organizations, or other non-business matters.
- c. Electronic Messages should be sent to smaller, rather than larger, audiences where appropriate. Limit the distribution list to those who need the information. Avoid broadcasting messages.
- d. Electronic Messaging is a method of communication not intended to replace written communication as part of a permanent file.. Routine Electronic Messaging are not intended to be retained as public records in the ordinary course of District business. It is the responsibility of staff to determine if Electronic Messaging is an official record and is covered within the scope of the records retention schedule.
- e. All Electronic Messaging will be deleted according to the schedule maintained by the District's Records Management and IS Department protocols.
- f. Email is not intended to be a large file delivery system. Email attachment size is limited to twenty-five (25) MB. Data that need to be transmitted for business purposes that exceed this size should utilize another method of secure transfer.
- g. Human Resources receive Electronic Messaging from a variety of sources. For reasons of confidentiality, most correspondence is not retained as a normal course of business. It is the employee's responsibility to notify Human Resources if they want certain Electronic Messaging correspondence kept as part of their personnel file or to be kept as a record.

#### 2.6 Data Storage Policy

- a. The IS staff maintains a backup of files located on District servers. Typically, backups are not performed on individual computers.



## ORANGE COUNTY WATER DISTRICT

### Addendum B to the Personnel Manual

## TECHNOLOGY USE POLICY

- b. As the District's Electronic Messaging systems are online services, backups of the District's Electronic Messaging systems are not performed.
- c. Each user is assigned a personal home directory or folder. In some cases, other network users cannot access this directory. Files stored in this area should be ones only the creator will use. All data and other forms of electronic information, including Electronic Messaging that is stored on any type of media provided by the District, are the property of the District. The District reserves the right to access and disclose all such stored information for any purpose at any time.
- d. Each division or department may be given a common area for their departmental data that other departments cannot access. Files stored in this area will be ones that will be used by other members in that division or department.
- e. Each user has access to common directories for his or her department and common directories of other departments. Files stored in this area will be ones that will be used by users outside of his or her division or department.
- f. Due to storage limitations, an increase in the number of users and an increase in data files being created, each User has been allocated disk space based on his or her position function and duties.
- g. Any files, data or other information that is stored locally on User systems and is related to District business shall be backed up by User to acceptable media as approved by the IS staffs, to the User's personal home directory as defined in 2.6.c above or to an online service as directed by the IS Department.
- h. Any files, data, or other information that is stored locally on user computers and is not related to District business will not be maintained, moved, copied, or replaced by the IS staff for any reason, including the replacement of or repair of a user's computer that would cause a loss of these types of files. If the IS staff finds that this type of data is causing a problem on the User's system, it will be the Users' responsibility to delete this data prior to maintenance of the system.

### 2.7 Electronic Signature Policy

- a. The term "electronic signature" means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.
- b. By logging into the District network using credentials (see section 2.4 of this policy), users establish an electronic signature to use for future actions and electronic record manipulation or creation on all district applications and systems from any electronic agent.
- c. Electronic signatures may not be denied legal effect, validity, or enforceability, solely because it is in electronic form (ESIGN Act, Title I, Sec. 101, enacted June 30, 2000).

### 2.8 Remote Access Policy

- a. Remote access services will be allowed for those Users specifically authorized and required to work from home (WFH), away from the office, or at District facilities lacking network communications upon written request from the appropriate department head and approval from the Director of IS and the General Manager.



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## TECHNOLOGY USE POLICY

- b. Access to the District Systems must be authorized by the IS Department and only using District provided or authorized equipment, software and/or services. All users will utilize a connection that restricts and logs activity. District Control System access is authorized by Water Production staff.
- c. Access by outside agencies, temporary employees, project employees, interns, volunteers, introductory employees, or consultants will need specific approval of the IS Department.
- d. The District will not be responsible for any damages, licensing issues, hardware or software configuration issues, delays, non-deliveries, or service interruptions that may occur due to use of personal equipment at home for District business.
- e. Employees' home computer equipment will not be supported, configured, maintained, or otherwise serviced by the District or the IS Department.
- f. All rules listed in this policy apply when accessing District Systems remotely.

### 2.9 SCADA and PCS System Remote Access (Control Systems)

- a. District staff may require accessing Control Systems remotely during regular work hours and after hours. A district laptop with mobile broadband connection is provided to accomplish this task. The mobile broadband use is subject to the provisions of this policy; unauthorized use is subject to disciplinary action up to and including termination in accordance with District Policy.

### 2.10 Telephones and Mobile Devices

- a. All District related telecommunications devices, regardless of type (land line, wireless, smartphones, two-way or cell phone) are provided as a tool to conduct District business.
- b. Mobile devices are governed by the Mobile Device Policy.

### 2.11 Internet Use

- a. The Internet is a business tool provided at significant expense and should be used primarily for business-related purposes (i.e., to communicate with customers and suppliers, to research relevant topics, and obtain useful business information). Users should conduct themselves honestly and appropriately on the Internet and respect the copyrights, software licensing rules, property rights, privacy and prerogatives of others, as would be the case in any other business dealing.
- b. All District policies apply to User conduct on the Internet, especially (but not exclusively) those that deal with intellectual property protection, privacy, misuses of District resources, sexual harassment, information and data security, and confidentiality. Some specific examples of prohibited uses include, but are not limited to, the following:
  - 1. Transmitting, retrieving, downloading, or storing messages or images that are offensive, derogatory, defamatory, off-color, sexual in content, or otherwise inappropriate in a business environment;
  - 2. Making threatening or harassing statements to another employee or to a vendor, customer, or other outside party;
  - 3. Transmitting, retrieving, downloading, or storing messages or images relating



## ORANGE COUNTY WATER DISTRICT

### Addendum B to the Personnel Manual

## TECHNOLOGY USE POLICY

to race, religion, color, sex, national origin, citizenship status, age, handicap, disability, sexual orientation, or any other status protected under Federal, State, and local laws;

4. Sending or receiving confidential or copyrighted materials without prior authorization;
5. Soliciting personal business opportunities or personal advertising; and
6. Gambling or playing electronic games.

### 2.12 System Administration Access and Monitoring

- a. Users should expect that all information created, transmitted, downloaded, received, or stored in District Systems may be accessed by the District at any time without prior notice. Employees should not assume that they have any expectation of privacy or confidentiality in such messages or information (whether or not such messages or information is password-protected), or that deleted messages are necessarily removed from the system.
- b. A system administrator (i.e., the person responsible for the technical operations of a particular machine or system) or any member of the IS Department or its designees may access User's files for the maintenance of networks, computers, and storage systems, such as to create backup copies of media. IS staff operating computers and networks may routinely monitor and log usage data, such as but not limited to network session connection times and source and destination, CPU and disk utilization for each user, security audit trails, network loading, etc.
- c. The contents of Electronic Messaging may be viewed by IS staff, Human Resources staff or staff authorized by the General Manager in the course of routine maintenance, public records requests, legal requests or as needed for District administrative purposes, including investigation of possible violations of this policy or other disciplinary action.
- d. IS or appropriate staff may review any data on District Systems, for evidence of violation of law or policy and other purposes and is responsible to report violations or abuse of privileges if made aware of them. Violations will be confidentially reported to the Human Resources Department. The Water Production staff will monitor the Control Systems as indicated in section 2.2h of this policy.
- e. The District will cooperate appropriately, upon the advice of legal counsel, with any local, state, or federal officials investigating an alleged crime committed by an individual affiliated with a District Systems, and may release information to such officials without the knowledge or consent of the User.

### 2.13 Purchasing and Upgrade Procedure

- a. To provide the most cost effective and efficient service, the IS Department has established standard hardware and software configurations and purchasing guidelines. All hardware and software acquisitions, whether new or upgrades, must be authorized by both the requesting department and IS Department before any purchases are made.
- b. Under no circumstances are unauthorized individuals to install any hardware or software on District Systems, or to relocate



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equipment.

- c. All computers, phones, workstations, servers, and peripheral equipment that are replaced for any reason must be surrendered to the IS staff upon replacement. Replaced equipment will be rendered obsolete and will not be available for redistribution or reallocation.

#### 3.0 DISTRICT RESPONSIBILITIES

- 3.1 The District has the responsibility to develop, implement, maintain, and enforce appropriate security procedures to ensure the integrity of individual and District information, however stored, and to impose appropriate penalties when privacy or security is purposefully ignored or circumvented.
- 3.2 The District has the responsibility to develop, implement, maintain, and enforce appropriate procedures to discourage harassment by use of its computers or networks, and to impose appropriate penalties when such harassment takes place.
- 3.3 The District has the responsibility to uphold all copyrights, laws governing access and use of information, and rules of organizations supplying information resources to the District.
- 3.4 The District, through its supervisors and department managers, has the responsibility of communicating and enforcing this policy, providing for security in his or her areas, controlling physical access to equipment, providing a proper physical environment for equipment, and providing reasonable safeguards against fire, flood, theft, etc.
- 3.5 Each supervisor and/or department manager has the responsibility to ensure appropriate training in the use of computer equipment and applications. That training may come from internal District resources or through contracted training classes.

#### 4.0 EMPLOYEE RESPONSIBILITIES

##### 4.1 District employees using District Systems will:

- a. Review these policies and procedures, guidelines, and definitions of acceptable and unacceptable uses of District Systems, the Internet, and other on-line services in general. The burden of responsibility is on the user to inquire as to acceptable and unacceptable uses prior to accessing the system. Due to the serious nature of District Systems security, compliance with applicable use restrictions is required.
- b. Respect the integrity of District Systems connected to the District network, the Internet, and other on-line services. Be aware of network or computer capacity and the impact that large and/or complex graphics and video files have on the District systems.
- c. Know and follow the generally accepted etiquette of Electronic Messaging, the Internet, and other online services.



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- d. Avoid uses that reflect poorly on a department or the District in general.
- e. Users should remember that existing and evolving rules, regulations, and guidelines on ethical behavior of government employees and the appropriate use of government resources also apply to the use of District Systems.

#### 4.2 Acceptable Computer and Internet Use

- a. Communication, research, and information exchange directly related to the District or department mission, or to the user's work tasks.
- b. Communication and exchange for professional development, to obtain training or education, or to discuss issues related to the user's District services activities.
- c. Use in applying for or administering grants or contracts for District programs.
- d. Use for advisory, standards, research, analysis, and professional society activities related to District tasks and duties.
- e. Announcement and/or tracking of new laws, procedures, policies, rules, services, programs, information, or activities.
- f. Any other District administrative communications not requiring a high level of security.

#### 4.3 Acceptable Use of Social Media/Social Networking

Social media is the term for Internet based tools used for publishing, sharing and discussing information. This includes blogs, wikis, and social networking sites such as Facebook, Twitter, Flickr, LinkedIn, etc. Employees might use social media as either the representative of the District making official comments or in their private capacity as a citizen. Use of the District's computer resources for connecting to, posting on, or reviewing correspondences to or from social media shall adhere to the guidelines previously outlined in this policy as well as the following;

- a. For any postings to the District's social network sites employees must adhere to any and all posted disclaimers, privacy policies terms of service, and terms of use.
- b. Only employees, authorized by the District, will be allowed to identify themselves as representatives of the District. Employees authorized to do so will bear the responsibility for representing the District in a professional manner.
- c. Dissemination of information that could be considered confidential, proprietary, or somehow sensitive in nature is not to be discussed or referred to on such sites. Any request for this type of information needs to adhere to the regular and normal channels of public information requests.
- d. Use of any social networking or media is not to interfere with employee's primary job responsibilities.

#### 4.4 Unacceptable Computer and Internet Uses

Use of the District's computer resources for purposes other than those identified in this policy is not permitted. Users are specifically prohibited from using District Systems in any manner identified in this section. Users who violate this section of the policy by engaging in inappropriate use of District Systems will be subject to revocation or





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suspension of user privileges, disciplinary action up to and including termination, in accordance with District policy, and may be subject to criminal or civil sanctions permitted by law. Such violations include, but are not limited to:

- a. Use of District Systems, the Internet, or any other online service for any purposes, which violate any state, federal, or local law.
- b. Destruction or damage to equipment, software, or data belonging to the District or others.
- c. Use for any for profit activities unless specific to the mission or duties of the user's department.
- d. Use for purposes not directly related to the mission or work tasks of the user during normal work hours, except as described in Section 2.2 of this policy.
- e. Use for private business, including commercial advertising.
- f. Use of District computing resources for external consulting is prohibited.
- g. Sending or soliciting sexually oriented messages or images, accessing Internet sites that are "adult-oriented" in nature, require the user to be over the age of 18 years, offer gambling services, or contain obscene content of any nature.
- h. Libelous, offensive, or harassing statements, including disparagement of others based on his or her race, national origin, sex, sexual orientation, age, disability, religious, or political beliefs.
- i. Use of District Systems to defraud, threaten, libel, or harass others.
- j. Impersonation of any person or communication under a false or unauthorized name.
- k. Transmission of any unsolicited advertising, promotional materials, or other forms of solicitation.
- l. Using District Systems for commercial purposes or personal financial gain.
- m. Inappropriate mass mailing, "spamming," or "mail bombing."
- n. Tampering with any software protections or restrictions placed on computer applications or files.
- o. Knowingly or maliciously introducing any invasive or destructive programs (i.e., viruses, worms, Trojan Horses) into District Systems.
- p. Attempting to circumvent local or network system security measures.
- q. Use of the District's provided computer systems, the Internet, or other on-line services to interfere with or disrupt network users, services, or equipment.