Model Personnel Guidelines

prepared for

The Special District Association of Colorado

by

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FOREWORD

A. Purpose and Use of These Guidelines.

This document is intended to provide special district board members and administrators with ideas and sample language for use in adopting or modifying employment guidelines. The guidelines have been drafted for use both as adopted district guidelines concerning terms and conditions of employment and as statements of those guidelines provided to employees in handbook form. Whether any specific guideline may be appropriate for any given special district depends upon the size of the district, the existing guidelines and practices of the district, and the intentions of board members. In smaller districts some of the subjects addressed in these guidelines may be dealt with administratively, informally, or not at all. In larger districts, needs for uniformity and the dissemination of correct information to all employees may dictate a more comprehensive selection of guidelines.

This document does not purport to set forth all personnel guidelines that might be adopted by a special district board. To a large extent the number and type of personnel guidelines adopted by an employer is a matter of judgment. While this document follows the emerging trend of characterizing what were formerly called “policies” as “guidelines” to avoid even the slightest implication of an implied contract, reference to such documents as “guidelines” rather than, for example, “operating procedures,” is also a matter of judgment. This document simply addresses subjects describing basic terms and conditions of employment which employers and employees alike should understand.

This document is not intended to provide any special district with legal advice. In promulgating these model personnel guidelines, neither the Special District Association of Colorado nor Semple, Farrington & Everall, P.C. undertakes to provide a legal opinion concerning any matter addressed in the guidelines or in any comments accompanying the guidelines. The effect of any of these guidelines may depend upon the specific circumstances in which they are applied. A special district’s legal counsel should be consulted when considering adopting these guidelines.

B. Organization of These Model Personnel Guidelines.

These guidelines are organized under thirteen general headings, numbered in series from 1.00 to 13.00. Specific guidelines are numbered decimally within the series. Where alternative guidelines addressing a given subject are offered, each alternative guideline is designated alphabetically.

Many of the model guidelines are accompanied by comments. These comments are not intended to be part of the guidelines, either as adopted by a board or as distributed to employees. Rather, they are included to further the reader’s understanding of the significance of the guidelines. The comments should not be included in a personnel guideline handbook developed from these model guidelines.
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1.00 INTRODUCTION

1.10 Disclaimer

IMPORTANT

THE GUIDELINES CONTAINED IN THIS HANDBOOK DO NOT REPRESENT A CONTRACT, ARE NOT MEANT TO BE ENFORCEABLE, AND SHOULD NOT BE RELIED UPON AS BINDING, INFLEXIBLE PROMISES MADE BY THE DISTRICT. THE DISTRICT RESERVES THE RIGHT TO CHANGE OR RESCIND THESE GUIDELINES AT ANY TIME, AS WELL AS THE RIGHT TO DETERMINE THEIR MEANING, PURPOSE, AND EFFECT. THE DISTRICT ALSO RESERVES THE RIGHT, IN ITS SOLE DISCRETION, TO DETERMINE WHETHER, AND TO WHAT EXTENT, THESE GUIDELINES SHOULD BE APPLIED IN ANY GIVEN CIRCUMSTANCES. THIS HANDBOOK SUPERSEDES ALL PREVIOUS EDITIONS AND SINGLE GUIDELINE MEMORANDA ISSUED IN THE PAST.

EMPLOYMENT WITH THE DISTRICT IS “AT-WILL.” ANY EMPLOYEE MAY BE TERMINATED WITH OR WITHOUT CAUSE, A STATEMENT OF REASONS, OR A HEARING, JUST AS ANY EMPLOYEE MAY RESIGN AT ANY TIME, FOR ANY REASON. NOTHING IN THIS HANDBOOK IS INTENDED TO MODIFY THE AT-WILL RELATIONSHIP BETWEEN THE DISTRICT AND ITS EMPLOYEES.

Comment: Colorado courts recognize that published employee handbooks, procedures or policies can create a contract between employer and employee, creating causes of action based on breach of contract and promissory estoppel. However, courts have also recognized that a conspicuous, unambiguous disclaimer in an employment handbook can bar lawsuits by employees seeking to enforce a policy or procedure contained in the handbook. Notice that the above guideline refers to the handbook as a set of “guidelines” rather than “policies” to further avoid the implication that this document constitutes any sort of contract.

To maximize the enforceability of a disclaimer, it should be conspicuously placed on the first page of the handbook, by itself, in boldface and uppercase type. Courts have held that if a disclaimer is not sufficiently conspicuous, the enforceability of personnel guidelines is a question of fact to be determined by a judge or jury at trial.

The above guideline assumes that the District has made all its employees “at-will.” In that likely case, a brief description of the “at-will” relationship should be present in the disclaimer, as it is above.
1.20 Purpose and Scope of Guidelines

These guidelines are intended to inform employees of the District’s position on basic, employment-related subjects. They are not all inclusive, but address those general topics most likely to be of interest to employees in the course of ordinary, day-to-day operations of the District. These guidelines serve as a reference source by employees and supervisors. The District expects that they ordinarily will be followed.

(A) These guidelines apply to all employees of the District, except where otherwise stated.

OR, AS AN ALTERNATIVE:

(B) These guidelines apply to all District employees except those in the following positions:

[List positions to which guidelines do not apply]

OR, AS AN ALTERNATIVE:

(C) These guidelines apply to all District employees, except that the following guidelines do not apply to the following positions:

[List specific guidelines and positions]

Comment: The specific purpose of a personnel guideline handbook may vary from district to district. Any statement of purpose, however, should be consistent with any disclaimer contained in a handbook. An employer may create an ambiguity by declaring in a disclaimer that guidelines are non-binding, informational, and subject to change, but then drafting a statement of purpose declaring its intent to uniformly follow the guidelines and mandating that all supervisors and employees know and be bound by the guidelines.

Depending upon the organization of a given special district, it may make sense to exempt certain employees from some or all of the guidelines in the handbook. This sample guideline sets forth simple optional alternative ways of exempting employees from some or all of the guidelines. An employer should expect that its guidelines apply to all employees unless the guidelines include a statement to the contrary. Oral statements or “common knowledge” should not be relied upon as a basis for limiting application of the guidelines.

If some employees are exempted from some or all of the guidelines, it must be understood that they cannot be exempted from most of the laws upon which those guidelines may be based (e.g., anti-discrimination laws). The requirements of state and federal statutes and regulations ordinarily do not depend upon an employer’s guidelines.
1.30 Employment At-Will

Employment with the District is “at-will.” Any employee may be terminated with or without cause, a statement of reasons, or a hearing, just as any employee may resign at any time, for any reason. Nothing in this handbook is intended to modify the at-will relationship between the District and its employees.

Comment: Any special district is free to determine whether its employees should be employed at-will; these guidelines assume that the large majority of special districts will do just that. In Colorado, public employees are presumably employed at-will, therefore employees of a special district may be considered at-will employees even without a specific guideline on the subject. In order to ensure that the at-will status of employees is preserved, however, an explicit at-will employment guideline is recommended, and appears here in addition to within the disclaimer.

1.40 Authority of Board of Directors

The District Board of Directors reserves the right to adopt, amend, or rescind any guideline, procedure, or benefit. Any modification of these guidelines may be made only pursuant to formal action of the Board of Directors, reflected in the official records of the Board. No employee or agent of the Board is authorized to modify these guidelines by agreement, practice, or otherwise.

Ultimate responsibility for operation of the District is vested in the Board of Directors. The Board retains the right to operate the District consistent with its legal authority, including, but not limited to, the right to direct the work of employees; hire, promote, demote, classify, evaluate, and retain employees in positions with the District; demote, suspend, discharge, or otherwise discipline employees; transfer, assign and schedule employees; lay off employees; determine and implement the methods, equipment, facilities, personnel, and other means by which District operations are to be conducted; take steps it deems necessary to maintain the efficiency and safety of operations; determine the budget of the District; determine the level of any activity or service provided by the District; and determine planning or staffing levels.

The Board of Directors may exercise its authority to manage the district through its supervisory employees.

Comment: The first paragraph of this section is intended to minimize potential claims that the Board or management personnel have modified or done away with one or more guidelines of the district through statements or conduct. The second paragraph is a typical recitation of management rights which may be exercised by the board of directors. The third paragraph points out that the management rights of the Board may be exercised through the Board’s supervisory employees.
1.50 **Equal Employment Opportunity**

The District is an equal employment opportunity employer. These guidelines are to be applied without regard to any otherwise qualified person’s race, creed, color, sex, sexual orientation, age, national origin, ancestry, religion, disability, or genetic information, subject to such reasonable requirements of the District as may be permitted by law.

**Comment:** This guideline sets forth in general terms those personal characteristics concerning which employment discrimination is prohibited by state and federal law, except for marital status, which is addressed separately in the nepotism guideline. The updated version of this guideline includes “sexual orientation” (defined by the law as “a person’s orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or an employer’s perception thereof”) as a protected class pursuant to recent Colorado law. This guideline does not impose any requirements on an employer not already imposed by law and is intended to preserve the employer’s right to consider bona fide occupational qualifications and its ability reasonably to accommodate disabled persons. The guideline is necessarily general; it would not be possible to draft a readily comprehensible guideline describing the requirements of this complex area of the law.

Guidelines such as this are commonplace. Many employers have even adopted guidelines exceeding the requirements of the law. Equal employment opportunity guidelines, however, are not ordinarily required unless an employer has a government contract or receives a government grant mandating such a guideline as a condition of the contract or grant. An employer’s obligation not to discriminate is, of course, fixed by law, irrespective of its employment guidelines.
2.00 WORKING CONDITIONS

2.10 Work Week

Each employee’s work week consists of a seven-day period beginning and ending at midnight Sunday unless otherwise specified in writing by an authorized representative of the District.

Fire suppression [and emergency medical] employees assigned to fire suppression duties shall normally be employed in recurring work periods of ________ consecutive days each beginning at ___ o’clock _.m. on the first day of the cycle, unless otherwise assigned.

Fire suppression employees are those who are trained in fire suppression, have the legal authority and responsibility to engage in fire suppression, and are engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk. Emergency medical employees are those who have special training in the rescue of fire and accident victims and who are regularly dispatched to fires, accidents, and other medical emergencies.

Comments: The Fair Labor Standards Act requires employers to establish a work week to provide for a consistent approach to overtime. For most employees, the Act requires overtime only for hours actually worked over 40 per week; hours for which employees are paid, but do not work, such as vacation, holidays, or sick leave, need not be counted in determining whether an employee has worked 40 hours in a week.

For fire suppression and emergency medical personnel, the Act permits a partial exemption from overtime by allowing public employers to establish work periods of from 7 up to 28 days and requires overtime only if those employees work more than 212 hours in a 28-day work period, or more than a proportionate number of hours for a shorter cycle. Effective in 2000, the Act was amended to clarify confusion about whether this partial overtime exemption could be applied to fire protection employees who were assigned to other related activities. Generally, under the amended definition, an “employee in fire protection activities” is a fire department employee who is: 1) trained in, and authorized to engage in, fire suppression duties and 2) engaged in the prevention, control and extinguishment of fires or in the response to emergency situations where life, property, or the environment is at risk. Where a fire suppression employee meets both parts of the foregoing definition, the partial overtime exemption applies whether the employee is assigned as a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel, or hazardous materials worker.

The Act contains an exemption from overtime requirements for fire districts with fewer than five employees.
2.11  Regular Work Week

The regular work week shall be forty (40) hours for all non-exempt employees, ordinarily to be worked in five (5) consecutive eight hour shifts, unless otherwise specified.

Employees assigned to fire suppression duties [and emergency medical employees] shall normally work an average of ________ hours during each work period.

Comment: The second paragraph of this guideline applies only to districts with fire suppression or emergency medical employees, and provides one example of a work week for such employees. As is noted in the Comment to Guideline 2.10, the FLSA regulates hours worked during work weeks and work cycles for overtime purposes.

2.12  On-Call Time

(A) Employees may be assigned on-call duty requiring that they be available for call-in during a specified time period outside their normal working hours. Employees placed on-call may be paid up to _______ hours straight time pay or compensatory time for each week of on-call duty.

OR, AS AN ALTERNATIVE:

(B) Employees may be assigned on-call duty requiring that they be available for call in during a specified time period outside their normal working hours. Employees are not paid for on-call time except as may be required by law.

Comment: The FLSA requires on-call pay where an exempt employee is so restricted in his activities that he cannot use his time as he chooses. Whether an employee is sufficiently restricted depends upon a number of factors. An employee who is not required to remain on the employer’s premises but is merely required to leave word where the employee may be reached is not working while on call. Where an employee who is on-call is free to come and go and to engage in personal activities, such time is not hours worked. This is true even if the employee is required to carry a paging device while on-call. As a general rule, an employee is working on-call if he is required to stay home or on the employer’s premises or required to respond within less than 20 minutes. Where on-call pay is mandated by the FLSA, employees must be paid for all time spent on call, although they can be paid a lower rate for that time. Many employers provide at least some compensation for on-call duty, even when the FLSA does not otherwise require pay. This guideline sets forth two alternatives, one providing for on-call pay, the other providing none, unless required by law.

2.13  Sleeping Time

Employees assigned to shifts of twenty-four (24) hours or longer shall be provided eight (8) hours sleeping time without pay. Employees shall be paid for interruptions to sleep time for the performance of duties. If sleep is interrupted such that at least five (5) hours sleep is not possible, all sleep time shall be compensated.

Comment: This guideline is appropriate for districts with twenty-four (24) hour employees that provide adequate sleeping facilities and have an express or implied agreement with such
employees that sleep time will not be compensated. The guideline reflects the Department of Labor’s enforcement policy concerning sleep time. See Wage & Hour Opinion Letter (September 30, 1999).

2.14 Training Time

District employees ordinarily are compensated for time spent in District-required training activities. Compensation will not be provided, however, for the following training unless specifically authorized by the District:

a) Training undertaken to meet certification requirements mandated by a higher level of government (e.g., the State of Colorado or the United States) for performance of the employee’s duties; and

b) Training meeting all of the following criteria:

1) Attendance is outside the employee’s regular working hours;

2) Attendance is in fact voluntary;

3) The employee performs no productive work during attendance; and

4) Training is not directly related to the employee’s job, unless the training is obtained at an independent school or college attended on the employee’s own initiative or the training program is established by the District and corresponds to courses offered by independent learning institutions.

Comment: This guideline is intended to reflect the Department of Labor’s requirements regarding compensation for training time. See Wage and Hour Opinion Letter (January 15, 2009). It sets forth the minimum requirements for such compensation.

2.20 Overtime

The District may require employees to work overtime.

(A) Employees who are not exempt from the Fair Labor Standards Act shall receive overtime compensation for hours actually worked in excess of forty (40) hours during the work week. Overtime shall not be worked unless approved by an authorized representative of the District.

OR, AS AN ALTERNATIVE:

(B) Employees who are not exempt from the Fair Labor Standards Act shall receive overtime compensation for hours actually worked over forty (40) hours during any work week or over eight (8) hours during any day. Overtime shall not be worked unless approved by an authorized representative of the District.
OR, AS AN ALTERNATIVE:

(C) Employees other than those assigned to fire suppression [or emergency medical] duties who are not exempt from the Fair Labor Standards Act shall receive overtime compensation for hours actually worked in excess of forty (40) hours during the work week. Employees assigned to fire suppression duties who are not exempt from the overtime requirements of the Fair Labor Standards Act shall be compensated at overtime rates for work actually performed in addition to their regularly assigned work schedule. Overtime shall not be worked unless approved by an authorized representative of the District.

Overtime compensation for time spent training shall be provided as required by the Fair Labor Standards Act.

Comment: This guideline presents several options, but certainly does not exhaust the possibilities. Paragraphs (A) and (B) differ only in that the latter provides for payment of overtime for hours worked over 8 per day in addition to overtime for hours over 40 in a week. Paragraph (A), like the Fair Labor Standards Act, calls for the payment of overtime only for hours worked over 40 per week. An alternative guideline is presented for firefighters and emergency medical personnel, and an optional provision concerning training time is also set forth.

2.21 Overtime Compensation

Non-exempt employees who actually work more than forty (40) hours in a work week [or more than eight hours in a day] shall be paid one and one-half (1-1/2) times their regular rate of pay as determined by the District pay schedule for hours worked over forty (40) [or over eight (8)], unless compensatory time is provided for the overtime worked.

Fire suppression and emergency medical personnel shall be compensated at one and one-half (1½) times their regular rate of pay as determined from the District pay schedule for work actually performed in addition to their regularly assigned work schedule, unless compensatory time is provided for such work.

Comment: For most employees, the Fair Labor Standards Act requires that hours worked over 40 in a week be compensated with an additional one-half (1/2) times the employee’s regular rate of pay. Overtime compensation need be paid only for hours actually worked over the statutory maximum, as this guideline states, although employers are free to count some or all hours paid but not worked (such as sick leave, holidays, etc.) as “hours worked” for overtime purposes. Overtime for firefighters and emergency medical personnel must be paid according to a formula prescribed by the FLSA, which formula should be taken into account when scheduling work for such employees.

The second paragraph of this guideline is applicable only to districts employing fire fighters.

2.22 Compensatory Time

Overtime actually worked by non-exempt employees may, at the District’s discretion, be compensated in compensatory time of one and one-half (1½) hour for each overtime hour worked. It is understood that in agreeing to work for the District, employees agree
to accept compensatory time in compensation for overtime actually worked when deemed appropriate by the District. Employees will be advised in advance whether overtime will be compensated with compensatory time or with payment at 1½ times the employee’s regular rate.

Employees are not permitted to accumulate more than ___ hours of compensatory time and in no case more than the maximum allowed by the Fair Labor Standards Act. Any employee may be directed to use accrued but unused compensatory time where he or she has accumulated the maximum permissible number of hours or, in the alternative, the employee may be precluded from earning additional compensatory time until hours are used. Upon termination of employment, employees shall be compensated for any unused compensatory time at their then-current rate of pay or their rate of pay at the time the compensatory time was earned, whichever is higher.

**Comment:** In general, a district may provide compensatory time for overtime worked only if it used compensatory time prior to April 15, 1986, or if it has an agreement with individual employees or a collective bargaining representative concerning the use of compensatory time. Permitting employees to accumulate between 40-80 hours of compensatory time is most common. The FLSA prohibits accumulation of more than 240 compensatory time hours, except that seasonal, public safety, and emergency response employees may accumulate 480 hours. This guideline is intended to notify employees that the use of compensatory time is a condition of the employment relationship. The statement that employees will be paid for unused compensatory time upon termination of employment is consistent with the requirements of the Fair Labor Standards Act.

### 2.23 Exempt Employees

Salaried executive, managerial, and supervisory employees are normally not eligible for overtime compensation of any kind. Such employees may receive bonus compensation in the form of additional pay or compensatory time in emergency situations requiring extraordinary work if authorized by the Board [or the Chief Executive Officer of the District].

**Comment:** Generally, executive, administrative, and professional employees are exempt from the overtime requirements of the FLSA. Whether a given employee is exempt depends upon the nature of his or her duties, not the employee’s job title. It is not practical to describe here the complete requirements of the Act for exempt positions, but, in general, exempt employees are salaried and have supervisory authority, exercise independent discretion, or have a professional education. **NOTE:** If an employee’s pay is subject to reduction based on quantity or quality of work, the employee may not be considered “salaried” for FLSA purposes. Some courts have held that employees were not salaried, and therefore not exempt, where their pay could be docked for disciplinary reasons or short term absences, even where their employers showed that the employees never actually lost pay for such reasons.

### 2.30 Hours of Work

Normal business hours for the District shall be from _______ o’clock a.m. until _______ o’clock p.m., Monday through Friday. Employees shall report to work no later than _______ o’clock a.m. and shall normally work until _______ o’clock p.m., with one hour [or one-half hour] for lunch, except that those employees assigned to shifts outside the normal business hours of the District shall work those hours designated for their shifts.
Comment: *An employer is free to establish its own business hours.*

2.31 Break Times

In addition to scheduled one-hour [or one-half hour] lunch breaks, employees shall be entitled to two (2) __-minute breaks each work day. All breaks, including lunch breaks, shall be scheduled by each employee’s supervisor, provided that, where possible, lunch breaks shall be scheduled between ___ a.m. and ___ p.m., or between the beginning of the and ending of the ___ hour of each shift. Once assigned, lunch periods and break time shall remain constant unless changed by an employee’s supervisor. Supervisors may require minor variations in lunch periods from day to day based on individual work requirements.

Comment: *The Fair Labor Standards Act does not regulate break time directly, but employees may have to be paid for breaks under certain circumstances. Note that Colorado employers are now statutorily required to “provide reasonable unpaid break time or permit an employee to use paid break time, meal time, or both, each day to allow the employee to express breast milk for her nursing child for up to two years after the child’s birth.” § 8-13.5-104(1), C.R.S.*

2.40 Attendance

Regular attendance by all employees is important to the successful operation of the District. Employees are expected to maintain a good attendance record and to report promptly for work in accordance with shift schedules.

2.41 Notice of Absence

Employees who must be absent from work ordinarily are expected to notify their immediate supervisors a reasonable time (normally not less than one-half (½) hour) before their scheduled starting time. The reason for and probable duration of the absence shall be provided by the employee. An employee’s failure to provide such notice may result in disciplinary action or discharge.

Comment: *This guideline establishes a time frame for notice of absence. The time required for advance notice can be chosen by an employer at its discretion; one-half hour is specified here only as an example.*

2.42 Tardiness

Persistent tardiness of nonexempt employees may be charged as leave without pay. An employee’s tardiness may be the basis for disciplinary action, including termination.

2.50 Pay Guidelines and Procedures

The Human Resources Department [or other department, division, officer or employee who may be responsible] is responsible for administering payroll and benefits, including receiving and resolving employee questions and problems concerning compensation.
2.51 Pay Periods

(A) Employees are paid twice each month, on the ______ and ______ day of the month. When payday falls on Saturday, checks will be available the first work day preceding Saturday. When payday falls on a holiday or Sunday, checks will be available the next following work day.

OR, AS AN ALTERNATIVE:

(B) Employees are paid on alternate Fridays in the week following the end of the pay period. Pay periods begin on Fridays at midnight. When pay day falls on a holiday, checks will be presented the next work day following the holiday. An employee who must be absent on pay day may authorize in writing the release of his or her paycheck to a representative. The District does not assume responsibility for any paycheck after it is released to an authorized representative. An employee who must be absent from work for a prolonged period may request in writing that his or her check be mailed to a designated address.

Comment: This guideline sets forth two examples of different pay periods. Colorado employers have a great deal of discretion in determining pay periods, limited only by the requirements that there be established and posted regular pay periods of no greater than one month or 30 days duration, whichever is longer, and that regular paydays be established no later than 10 days following the close of each pay period, unless the employer and employee “mutually agree” otherwise.

2.52 Deductions

Federal and state income taxes [and social security contributions, if applicable] are automatically deducted from employee paychecks, as is required by law. In addition, the following payroll deductions may be authorized in writing by individual employees:

[List available deductions, e.g., employee contributions for health or life insurance, credit union payments, deferred compensation, charitable contributions, or reimbursement to employer]

No other deductions will be made by the District.

Comment: Beyond payroll taxes, an employer is not required to make payroll deductions. The District may decide to allow additional deductions as it sees fit and may require deductions for employment benefits such as health insurance.

2.53 Garnishment

A garnishment is a legal deduction of a specified sum from an employee’s wages in order to satisfy a creditor. If the District is required to garnish an employee’s wages, the garnishment will be made in accordance with the law.

2.54 Direct Deposit

Employees may authorize in writing the direct deposit of their net earnings with a designated financial institution [or with a financial institution designated by the District]. Upon the authorization of direct deposit by any employee, that employee’s net earnings shall be deposited with the designated institution until such time as the authorization is rescinded in writing.
2.60 Safety

It is the responsibility of each employee to learn and observe all applicable safety practices, guidelines, directives, or procedures. Safety-related questions should be directed to each employee’s immediate supervisor. Violation of safety practices, guidelines, directives, or procedures may result in disciplinary action up to and including discharge.

2.61 Safety Rules

The District has safety rules with which employees are expected to comply. These rules are not exclusive; employees are expected to do their jobs in a reasonable and safe manner whether or not specific safety rules apply. It is the responsibility of each employee to read and understand all District safety rules. Disobeying a safety rule may result in disciplinary action up to and including discharge.

2.62 Reporting Accidents/Workers’ Compensation

Any employment-related accident involving any injury or property damage whatsoever must be reported to the immediate supervisor of each employee involved in or witnessing the accident. Such report shall be made at the earliest practicable time. Failure to report promptly any accident involving injury or property damage may result in disciplinary action up to and including discharge.

Employees are covered for employment-related injury or illness by the Colorado Workers’ Compensation Act. Under the Act an employee may receive benefits for missing work as a result of an employment-related injury or illness. Delay in reporting a work-related injury or illness may result in a loss of benefits under the Act.

2.63 Maintenance/Housekeeping

Each employee is responsible for the condition of equipment used on the job. Equipment which is damaged, worn, or in need of maintenance should be reported to appropriate personnel. Employees should direct any concerns regarding the use of equipment to their immediate supervisors.

Cleanliness and orderliness are important to the operation of the District. Employees are responsible for keeping their work areas clean and orderly. The District reserves the right to restrict the placement of pictures or posters on walls within District premises.

Comment: The regulation of pictures or posters on walls within employee work areas may raise First Amendment concerns where only materials containing messages disfavored by district management are prohibited.
3.00  COMPENSATION

3.10  Pay Schedule

Employees are paid according to a pay schedule adopted by the Board of Directors. Employees shall be placed on the pay schedule according to their job classification [and any other factors relevant to the specific pay schedule]. Any employee temporarily assigned outside of his or her regular classification shall be paid at the rate for the temporary classification after ______ week(s), until such time as he or she returns to his or her former classification.

Comment: This guideline leaves it to the board of directors to establish pay classifications and rates of pay which are entirely separate from the employment guidelines. If the district’s pay schedule contains step increases and pay grades requiring explanation, an appropriate explanation may, but need not be provided in these guidelines.

3.20  Holiday Pay

Employees who work on District-designated holidays shall, at the election of the District, be compensated with: (a) in addition to their regular pay, compensatory time at the rate of one hour for each hour worked on the holiday; or (b) time and one-half pay for each hour worked on the holiday.

Comment: Employers are free to determine what, if any, additional compensation will be provided for holiday work. This guideline describes one option.

3.30  Insurance Benefits

All employees [or regular, full-time employees, or any group of employees designated by the District] are eligible to receive group insurance benefits as established by the District Board of Directors. The terms and conditions of all group insurance plans offered by the District are subject to change from time to time at the discretion of the Board of Directors. District insurance plans may require employee contributions as a condition of participation. Required contributions must be made through payroll deductions.

Comment: Historically, employers have not been required to provide insurance benefits of any kind (except workers’ compensation and unemployment coverage), to any employee. However, the Patient Protection and Affordable Care Act and Health Care and Education Tax Credit Reconciliation Act of 2010 imposed certain requirements upon employers with fifty or more “full-time equivalent employees” that will become effective on January 1, 2014. Districts should consult their legal counsel before that time to ensure compliance with the 2010 health care reform laws.
3.31 **Health and Dental Insurance**

The District offers health [and dental] insurance for eligible employees. Information is available from the Human Resources Department [or appropriate administrator] concerning available options, coverage dates and scope of coverage.

Employees or their spouses may be eligible for continuation of coverage under the District’s group health and dental plans upon separation from employment for reasons other than gross misconduct.

**Comment:** If health and/or dental insurance is provided by an employer having 20 or more employees, federal law requires that employees be offered continuation of coverage at employee expense for up to 18 months upon separation from employment under normal circumstances. Colorado law requires that all employers providing group sickness and accident coverage provide up to 90 days continuation coverage at employee expense.

3.32 **Life Insurance**

The District provides group life insurance for all eligible employees up to a maximum amount determined by the Board of Directors and available from the Human Resources Department [or appropriate administrator]. Specific information as to coverage and any available options is available from the Human Resources Department [or appropriate administrator].

3.33 **Long-Term Disability Insurance**

The District provides long-term disability insurance coverage for eligible employees. Specific information concerning such insurance is available from the Human Resources Department [or appropriate administrator].

3.34 **Vision Insurance**

The District provides vision insurance coverage for regularly employed, full-time [regular] employees. Specific information concerning such insurance is available from the Human Resources Department [or appropriate administrator].
3.40 Retirement Benefits

(A) Retirement benefits are provided pursuant to state law.

OR, AS AN ALTERNATIVE:

(B) The District offers a retirement plan in which all regularly employed, full-time employees must participate. Information concerning specific details of the retirement plan is available from the Human Resources Department [or appropriate administrator].

OR, AS AN ALTERNATIVE:

(C) The District participates in the Old Age and Survivors Insurance System (social security). All District employees and the District are required to make contributions as required by the Federal Insurance Contributions Act (FICA).

Comment: This guideline presents the basic retirement options available to special districts. The options are not necessarily exclusive of each other, depending upon the specific circumstances.
4.00 LEAVE TIME/HOLIDAYS/VACATION

Unless otherwise specified, all regularly employed, full-time employees are provided the following leave time, holidays, and vacation. Employees are considered full-time within the meaning of these guidelines if they are regularly employed for at least ________ hours per week.

Comment: Employers have extremely broad discretion concerning leave time, holidays, and vacation. Other than as required by the Family and Medical Leave Act, the law does not mandate vacations, leave, or holidays, but does impose certain restrictions if such benefits are offered. Some restrictions are discussed in connection with specific guidelines below.

The guidelines set forth below are all optional.

4.10 Vacation

Full-time, regular employees accrue vacation annually after the first full year of employment as follows:

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Employees may accrue vacation from one year to the next only with the approval of their supervisor. In no event shall an employee be permitted to accrue more than ______ (___) hours of vacation.

Vacation shall not be used in advance of its accrual. All use of vacation time must be approved by each employee’s immediate supervisor.

Absent written agreement to the contrary, signed by the District’s chief executive officer, employees will not be paid for accrued but unused vacation, provided that employees who terminate their employment with accrued but unused vacation shall be paid at their current regular rate for such vacation time.

Comment: Whether employees receive paid vacations, and if so how much, are matters determined by employers or through agreement with employees. Payment for accrued vacation upon separation from employment is not mandated by law, but rather is determined by agreement or via a guideline. If accrued vacation is not to be compensated upon separation from employment, district guidelines should so state. Employers probably can provide for payment for accrued vacation time in some circumstances, e.g., retirement, while denying such payment in others, e.g., dismissal for cause.
4.20 Holidays

The District provides the following paid holidays:

- New Year’s Day (January 1)
- Martin Luther King Day (third Monday in January)
- Presidents’ Day (third Monday in February)
- Memorial Day (last Monday in May)
- Independence Day (July 4)
- Labor Day (first Monday in September)
- Veteran’s Day (November 11)
- Thanksgiving Day (fourth Thursday in November)
- Christmas Day (December 25)

When a holiday falls on a Sunday, the following Monday shall be observed. When a holiday falls on a Saturday, the preceding Friday shall be observed. Employees who are normally scheduled to work on Saturdays or Sundays will observe the actual day of the holiday. To receive pay for a designated holiday, an employee must have worked on or been paid for the work day immediately preceding and the work day immediately following the holiday.

Comment: Special districts are not required by law to provide any paid holidays to employees, and may provide paid holidays other than those listed.

4.30 Leave Time

The District provides paid or unpaid leave for use by employees under specific circumstances. Available leave and the circumstances under which it may be used are described below. The use of paid leave ordinarily must be approved in advance by each employee’s supervisor. Unless advance approval is obtained, if possible, an employee may be charged for unpaid leave even if he or she is absent for a reason for which leave could otherwise be used. In addition, absence from work without advance approval may subject an employee to discipline, up to and including discharge.

Comment: The following guidelines set forth examples of kinds of leave that might be offered by an employer. Paid leave is not required by law, although most employers provide at least some such leave, and the Family and Medical Leave Act (FMLA) may require paid benefits during leave. Except as restricted by the FMLA, employers have great leeway in deciding the terms and conditions on which paid leave will be made available when it is offered.
4.31 Sick Leave

All regular, full-time employees accrue sick leave. Sick leave shall accrue monthly at the rate of ____ (__) hours per month.

Fire suppression [and emergency medical] employees assigned to fire suppression duties and working twenty-four (24) hour shifts shall accrue sick leave at the rate of ____ (__) hours for each ____ (__) hours worked.

Sick leave may be used only for the following purposes:

1. When an employee is incapacitated due to illness or injury;
2. When an employee or an immediate family member of an employee requires a health examination or medical treatment;
3. As a supplement to Workers’ Compensation benefits upon the expiration of injury leave; and
4. When an employee is required to be in attendance for the necessary medical care of a member of the employee’s immediate family.

Employees who know in advance that they will be using sick leave (for example, when a health examination or medical treatment has been scheduled) are expected to notify their supervisors promptly of the time and anticipated duration of their absence.

Sick leave may be used for fractions of work days, however employees will be charged for at least ____ (__) hours each time sick leave is used. If illness or injury impairs an employee’s job performance, the District may require that the employee use sick leave for the remainder of his or her work day or shift.

Sick leave may be accumulated from year to year. Upon separation from employment after ____ (__) years of continuous service, employees may receive ____ (__) hours pay at their regular rate for every ____ (__) hours of accumulated sick leave, unless such separation is the result of dismissal for cause.

The District reserves the right to require at any time that an employee using sick leave or returning from sick leave provide a written statement of a physician regarding the nature of the employee’s illness or injury and/or the employee’s fitness to return to work.

Comment: There are many different types of sick leave guidelines. This guideline suggests one possibility. The Family and Medical Leave Act requires extended health leave for eligible employees under certain circumstances and requires that employees be permitted to use sick leave (if they have any available) under certain circumstances.

4.32 Maternity Leave

Childbirth and disabling conditions arising from pregnancy are regarded by the District in the same manner as any other physical condition or disability. Because it can reasonably be expected that pregnancy will necessitate an employee’s absence from work at some point in time, employees are expected to notify their supervisors when pregnancies become known.

Comment: The law requires that physical disabilities resulting from pregnancy be treated in
the same manner as other physical disabilities. Pregnancy itself is not a disability, but ordinarily results in a temporarily disabling condition. If leave, be it paid or unpaid, is available for illness or other disabling conditions, such leave must be made available for pregnancy-related physical conditions. An employer runs afoul of the law by imposing additional conditions on the use of leave for maternity purposes.

4.33 Family and Medical Leave.

Except as specified below, employees may be eligible for up to twelve weeks leave under the Family and Medical Leave Act (FMLA). Generally, to qualify for such leave, an employee must have worked at least 1,250 hours for the District during the twelve months preceding the beginning of the leave and the District must employ at least 50 people at the time of the leave. FMLA leave ordinarily is available for the following reasons:

a. Employee’s serious health condition;

b. Employee’s incapacity due to pregnancy, prenatal medical care, or child birth;

c. Parent’s care of a newborn, if completed within twelve (12) months following birth of a child;

d. Placement of a child with employee for adoption or foster care;

e. Serious health condition of employee’s son, daughter, spouse, or parent;

f. Qualifying exigency of employee’s spouse, child, or parent on or called to active duty in the Armed Forces, including a member of the National Guard or Reserves (“Exigency Leave”); or

g. Serious injury or illness incurred in the line of duty of employee’s spouse, son, daughter, parent, or next of kin who is a current member of the Armed Forces, including a member of the National Guard or Reserves (“Military Caregiver Leave”). Employees taking Military Caregiver Leave may take up to twenty-six weeks of leave to care for a covered servicemember with a serious illness incurred in the line of duty on active duty.

The amount of FMLA leave available will be determined based on a “rolling” twelve month period, meaning that the amount of FMLA leave available to an eligible employee at any given time is twelve weeks less the amount of FMLA leave used during the preceding twelve months. For employees taking Military Caregiver Leave, however, the twelve month period begins on the first day the employee takes leave for this purpose and ends twelve months thereafter.

Spouses who both are employed by the District ordinarily will be limited to an aggregate of twelve weeks leave under the Act on account of the birth or placement of a son or daughter or to care for a sick parent.
Employees may elect, or the District may require the employee to use accrued vacation or any other available paid leave other than sick leave during FMLA leave when FMLA leave is taken because of the birth or placement of a child or to care for a family member with a serious health condition. An employee may elect, or the District may require the employee to use any paid leave, including sick leave, during FMLA leave when FMLA leave is taken because of an employee’s serious health condition or to care for a family member with a serious health condition.

Employees who intend to use FMLA leave must give at least thirty days notice when circumstances permit. The District may also require a physician’s certification for health leave and may require a second opinion at District expense from a District-designated physician, as a condition to approval of such leave. An employee’s failure to provide physician’s certification may result in denial of leave.

Any employee taking FMLA leave shall be provided health insurance benefits upon the same terms and conditions as if the employee had continued to work during the time on leave. Employees taking FMLA leave shall be responsible for any required employee contributions for such benefits throughout the time of the leave. Failure to make employee contributions may result in lapse of health insurance. If an employee fails to return from FMLA leave for reasons other than the continuation, recurrence, or onset of a serious health condition or because of other circumstances beyond the employee’s control, the District shall be entitled to reimbursement for the cost of providing such benefits.

At the end of an approved FMLA leave the District will return the employee to the same or an equivalent position with no loss of benefits.

If an employee takes FMLA leave due to the employee’s own serious health condition, a return to work certification from an appropriate health care provider may be required. Failure to provide such certification may result in denial of reemployment.

Comment: Congress enacted the Family and Medical Leave Act in 1993. The FMLA applies to any “public agency.” Employees are not eligible for FMLA leave, however, unless they work at a site employing 50 or more employees within a 75 mile radius. Employees eligible to take advantage of the Act also must have been employed for at least twelve months, having worked at least 1,250 hours during that time.

As a practical matter, even though all special districts are covered by the FMLA, no employee of a special district is eligible for FMLA leave unless the district employs at least 50 people.

This guideline sets forth most of the restrictions on FMLA leave permitted by the Act. Certain others are discussed in this comment. Federal regulations require that employee handbooks describe an employer’s FMLA policies and provide information regarding FMLA rights and responsibilities.

The Act requires employers to provide eligible employees with up to twelve weeks leave during any twelve month period for the birth of a child; placement of a child for adoption; care of a spouse, son, daughter, or parent; a “serious health condition” rendering the employee unable to perform the functions of his or her position; a qualifying exigency of employee’s spouse, child, or parent on or called to active duty in the Armed Forces (“Exigency Leave”); or a serious injury or illness incurred in the line of duty of employee’s spouse, son, daughter, parent, or next of kin who is a current member of the Armed Forces (“Military Caregiver Leave”). Where both a husband and wife work for the same employer, they may be limited to twelve (12) weeks leave in the aggregate for reasons of birth, adoption, or parent care.
Recent FMLA regulations created the concepts of Exigency Leave and Military Caregiver Leave. Exigency Leave is leave taken by eligible employees with a spouse, child, or parent on active duty or called to active duty in the National Guard or Reserves in support of a contingency operation. “Qualifying Exigencies” are (1) short-notice deployment; (2) military events and related activities; (3) childcare and school activities; (4) financial and legal arrangements; (5) counseling; (6) rest and recuperation; (7) post-deployment activities; and (8) additional activities agreed to by the employer and the employee. Note that Exigency Leave is available only to families of servicemembers in the National Guard or Reserves, and not to families of servicemembers in the regular Armed Forces. Military Caregiver Leave is leave taken by an eligible employee who is the spouse, son, daughter, parent, or next of kin of a current member of the regular Armed Forces or National Guard or Reserves to care for such servicemember with a serious injury or illness incurred in the line of duty on active duty. The employee may take up to twenty-six (26) weeks of such leave, and, unlike other forms of FMLA leave, an employer may not select the 12-month period for computing available Military Caregiver Leave; rather, the 12-month period begins on the first day the employee takes leave for this purpose and ends 12 months thereafter. Military Caregiver Leave entitlement applies on a per-covered servicemember, per-injury basis.

The Act specifies that a spouse, child, or parent need not be biologically related. A “parent” can be one who stands “in loco parentis” and a “child” may be adopted, foster, step, a legal ward, or someone to whom the employee stands “in loco parentis.” A child, however, must be under eighteen years old or incapable of self care because of disability. A “serious health condition” is a physical or mental condition requiring in-patient care or continuing treatment by a health care provider.

The Act states that leave “shall not be taken” intermittently or part-time unless otherwise agreed, but establishes an exception “when medically necessary.” If an employee requests such leave based on planned medical treatment, an employer may transfer the employee temporarily to an available alternative position that “better accommodates recurring periods of leave.” Such position must carry the same pay and benefits. To take intermittent or part-time leave an employee must make a reasonable effort to schedule treatment that will not “disrupt unduly” the employer’s operations, must give thirty days notice, if possible, and may be required to provide certification of the planned treatments, dates of treatment, and duration of treatment.

For any foreseeable leave, employees must give thirty days notice. An employer may require a physician’s certification for any health leave and may require a second opinion (at the employer’s expense) from a doctor designated by the employer. If the employer’s doctor’s opinion differs from that of the employee’s doctor, the parties must agree on a third doctor whose opinion would be conclusive.

At the end of a leave an employer is obligated to return the employee to the same or equivalent position with no loss of benefits. The employer may require a certificate of fitness upon return if such requirement is pursuant to a uniformly applied practice. The employer may deny restoration to a salaried employee who is among the highest-paid ten percent of those employed within a seventy-mile radius if “grievous economic injury” would otherwise result and if the employer notifies the employee as soon as the likelihood of such injury becomes apparent. If such notice is given after the employee’s leave has begun and the employee elects to return to employment, restoration may not be denied.

During an employee’s leave, the employer must maintain coverage for the employee under any “group health plan” on the same basis as if the employee had worked continuously during the leave. If an employee does not return from the leave the employer may recover premiums unless the employee fails to return because of a serious health condition or for
other circumstances beyond the control of the employee.

4.34 Parental Leave

Upon the birth or adoption of a child in an employee’s family, the employee may be provided up to ________ (__) weeks unpaid parental leave. Such leave may be renewed upon the employee’s request at the discretion of the District. Any employee who takes a parental leave of more than one month’s duration shall be required to pay the full cost of any insurance benefits provided to the employee by the District.

Comments: Parental leave is not required by law for districts with fewer than 50 employees. The Family and Medical Leave Act requires up to 12 weeks parental leave for employees of districts with more than 50 employees working within a 75-mile radius. See Guideline 4.33. Districts not subject to the FMLA have a free hand in determining whether to grant parental leave and, if so, how much such leave to grant. A recent Colorado statute also requires Colorado employers to grant employees unpaid leave not to exceed six hours in any one-month period and eighteen hours in an academic year for the purpose of attending academic activities for or with the employee’s child. § 8-13.3-103, C.R.S. However, an employer satisfies that requirement if it makes available an equivalent amount of unpaid or paid leave, including vacation leave, sick leave, or personal leave. As most districts offer such leave, a separate guideline concerning parental academic leave is not warranted.

4.35 Personal Leave

Each full-time, regular employee of the District is allowed up to ___ (__) days personal leave which may be used in case of emergency or upon approval of the employee’s supervisor. Such leave must be applied for in writing, in advance if possible, and does not accumulate from year to year.

4.36 Military Leave

Full-time employees who are members of the National Guard or reserve forces are entitled to military leave without loss of benefits or status for up to fifteen (15) days each calendar year while they are engaged in training or other service under orders. Any employee who is required to continue in military service beyond the time allowed for military leave shall be afforded leave without pay for the duration of his or her service and shall be reinstated to full employment rights upon separation from military service as required by law, provided he or she reports to the District for work within ninety (90) days from such separation.

Employees on military leave are paid the difference between their regular straight time pay and pay received for military service for up to ten (10) working days per calendar year. To receive such pay, an employee must provide a military pay statement verifying the amount received by him or her for military service.

Comment: Leave for military service is required by state and federal law, although there is no requirement that employers pay the difference between military pay and an employee’s regular pay during such leave.

4.365 Volunteer Leave

Employees called into service by a qualified volunteer organization certified by the State of Colorado are entitled to a leave of absence without loss of benefits or status while the employee is volunteering for such organization. Such paid leave shall not exceed a total of fifteen (15) days in any calendar year and shall be allowed only if the required volunteer service is satisfactorily performed, which shall be presumed unless the contrary is established. Leave pursuant to this guideline shall only be allowed if the employee returns to his/her position the next scheduled work day after being relieved from emergency volunteer
service, except for cases in which the employee is unable to return to work due to injury or circumstances beyond the employee’s control and the employee notifies the District as soon as practicable, but prior to the next scheduled work day.

**Comment:** This guideline meets the requirements of § 24-32-2225, C.R.S., the Colorado statute enacted in 2008 that requires public employers to offer volunteer leave.

### 4.37 Bereavement Leave

Any employee who suffers a death in his or her immediate family will be allowed ___ (_) days leave at full pay and may request additional unpaid leave. For purposes of this guideline, an employee’s “immediate family” includes his or her spouse, children, parents, grandparents, grandchildren or siblings, and the parents, siblings or children of the employee’s spouse.

Employees who work 24-hour shifts shall be granted bereavement leave up to a maximum of ___ work shifts, but may request additional unpaid bereavement leave.

### 4.38 Injury Leave/Workers’ Compensation

Any employee who incurs a work-related injury or illness is entitled to benefits pursuant to the Workers’ Compensation Act. The District shall pay such employee the difference between his or her Workers’ Compensation benefits and his or her regular straight time pay for up to ___ (_) calendar days from the date of the injury or onset of illness. After the day, any additional period of injury leave shall be charged to the employee’s accumulated sick leave, accumulated vacation leave, and accumulated compensatory time, in that order.

Any employee on injury leave shall provide the District with such information concerning his or her medical condition as the District may require from time to time.

**Comment:** Employers are not required to make up the difference between workers’ compensation payments and regular earnings, although this guideline is drafted to provide for such payment for a time to be specified.

### 4.39 Administrative Leave

Employees may be placed on administrative leave with pay under such circumstances as may be deemed necessary by the District. Employees placed on administrative leave will be advised of the reason for the leave and, if possible, the probable duration of the leave.

**Comment:** Administrative leave should generally be used as an investigatory tool rather than as a disciplinary action. For that reason, administrative leave should be paid leave.
4.40 Unpaid Leave

Under circumstances where an employee is not eligible for paid leave, he or she may be granted unpaid leave on such terms and conditions as may be permitted by the District in its discretion. Unpaid leave shall not be granted for more than six (6) months, but may be renewed by the District upon its expiration.

Employees shall not accrue vacation, sick leave, or personal leave while on unpaid leave. Employees on unpaid leave are eligible to receive group insurance benefits upon their timely payment of appropriate premiums.

Failure of an employee to return upon expiration of unpaid leave may result in termination of employment.

4.50 Jury Duty/Court Time

Any employee who is summoned for jury duty or subpoenaed in connection with his or her employment during a regularly scheduled work time will be compensated for scheduled hours. A copy of the subpoena or order requiring such duty must be submitted with a leave request in order for such compensation to be paid. As a condition of the receipt of such pay, any stipend paid to the employee for jury service or as a witness fee must be paid to the District or an equivalent amount deducted from the employee’s pay.

Comments: Colorado requires that employers pay employees their regular wages up to $50 per day for the first three days of jury service. Employees must tender a juror service certificate before they are lawfully entitled to receive such pay. Employers are also prohibited by law from depriving employees of any “incidents or benefits” of employment as a result of jury service; harassing, threatening or coercing any employee for performing his or her obligations as a juror; or making any demands upon any employee which will substantially interfere with the performance of juror service.

4.60 Voting

Any employee whose work schedule is such that polls are not open during at least three (3) non-working hours on Election Day shall be permitted paid leave for the time spent voting, not to exceed two (2) hours.

Comment: This guideline reflects the requirements of Colorado law.

4.70 Leave to Seek Protection

An employee who is the victim of domestic abuse, stalking, sexual assault, or any other crime involving domestic violence may be eligible for up to three working days of leave in a twelve-month period to seek protection. Generally, to qualify for such leave under Colorado law, an employee must have worked for the District for the twelve months preceding the beginning of the leave and the District must employ at least 50 people at the time of the leave. Such leave ordinarily is available for the following purposes:

a. To seek a civil restraining order to prevent domestic abuse;

b. To obtain medical care or mental health counseling for the employee or the employee’s child to address physical or psychological injuries resulting from the act of domestic abuse, stalking, sexual assault, or other crime involving domestic violence;

c. To secure the employee’s home from the perpetrator or seek new housing to escape the perpetrator; or
d. To seek legal assistance to address issues arising from the domestic abuse, stalking, sexual assault, or other crime involving domestic violence, and attending and preparing for related court proceedings.

Except in cases of imminent danger, the employee taking leave to seek protection shall provide advance notice to the District and shall provide any documentation requested by the District. The employee shall be required to use any annual, vacation, personal, and sick leave, as applicable, before being granted any leave under this section. If no such paid leave is available, the employee’s leave to seek protection will be granted without pay.

**Comment:** In 2002, the Colorado General Assembly enacted a new law applicable to employers of at least 50 people. See § 24-34-402.7, C.R.S. (“Unlawful action against employees seeking protection”). This law gives an employee who has worked for the employer for at least twelve months the right to take leave from work for up to three days in a twelve-month period for the purposes outlined above. The leave is applicable only in relation to certain crimes, domestic abuse, stalking, sexual assault, or other crime involving domestic violence, as such crimes are defined by statute. The employer may require the employee to exhaust vacation, annual, personal, and sick leave, as applicable, before granting leave to seek protection. However, if no such paid leave is available, the employer must grant leave to seek protection to the eligible employee. The sample guideline above provides that leave to seek protection will be without pay, but an employer may elect to fully or partially compensate the employee during such leave.

The General Assembly also provided for procedures for obtaining a restraining order so that an employer may seek a restraining order against a person in order to protect its employees from imminent danger. See § 13-14-102(4)(b), C.R.S. However, if an employer does not seek a restraining order to protect its employees, it is not liable for failing to do so.
5.00 EMPLOYMENT PRACTICES

5.10 Eligibility to Apply for Transfer or Promotion

Employees shall not be eligible to apply for transfer or promotion until completion of ____ (__) days of employment in his/her current position with the District, which period of employment may be enlarged at the discretion of the District.

Comment: This guideline was formerly designated “Introductory Period” and provided for a period of unspecified length before an employee would be considered a “regular employee” and be eligible to apply for transfer or promotion. The updated version of this guideline removes all mention of such an “introductory period” to avoid the implication that employees are entitled to additional rights following its completion. If certain district benefits are only available to district employees after a specified period of employment, guidelines should describe that period of employment specifically with regard to each such benefit rather than defining and referring to an “introductory” or, worse, “probationary” period.

5.20 Training and Education

The District supports education and training programs which improve the skills, qualifications, and performance of District employees. The District will pay the fees and costs of education and training programs that are specifically required by the District. In addition, the District may, in its discretion, approve payment of all or a portion of the fees and costs of education or training programs requested by employees. The District’s approval of payment for one segment, portion, or course that is a component of an education or training program does not obligate the District to pay for any additional segment, portion, or course.

It is ordinarily each employee’s responsibility to maintain state-mandated certificates or credentials necessary to the employee’s job.

Educational leave is available, at the District’s discretion, to assist employees in developing professional and technical skills related to employment with the District. Such leave may be granted to attend professional or technical conferences, training seminars, schools, or programs. Educational leave must be approved in advance by [the District’s Chief Executive Officer or other appropriate manager]. Requests for educational leave must be made in writing and must clearly state the dates and purpose of the leave requested.

5.30 Vacancies

The District considers a position vacant when there is no employee assigned to the position who has the foreseeable ability or apparent intention to perform the duties of the position. The District reserves the right to declare a position vacant under other circumstances, for example, the apparent abandonment of a position by an employee, and also reserves the right not to declare a position vacant, in its discretion.

Employees of the District are encouraged to apply for vacant positions for which they are qualified. The District awards vacant positions to the applicants who are best-suited to meet the needs of the District.
Comment: The updated version of this guideline removes a reference to the employee’s “introductory period” for the reasons stated above.

5.40 Promotions

A promotion is considered the advancement of an employee to a position that carries more responsibility and a higher rate of pay. All regular employees of the District are eligible to be considered for promotions for which they apply and are qualified.

The effective date of an employee’s promotion establishes a new starting date for any annual salary increases for which the employee may be eligible.

Comment: Promotion guidelines are totally discretionary except that they may not be unlawfully discriminatory. The updated version of this guideline removes a reference to the employee’s “introductory period” for the reasons stated above.

5.50 Transfers

An employee may be transferred through promotion, successful application for a vacant position, or at the direction of the District.

An employee who is temporarily transferred to a different position for ____ days or less, shall incur no reduction in pay during that temporary transfer. Employees temporarily transferred to higher paying positions will be paid at the higher rate of pay after ___ days. The District may approve payment at the higher rate prior to 60 days, in its discretion.

Comment: Again, transfer guidelines are totally discretionary except that they may not be unlawfully discriminatory. This guideline contains suggestions addressing various issues that arise when transfers occur.

5.60 Nepotism

The District ordinarily will not employ close relatives under circumstances where:

(1) One would directly or indirectly exercise supervisory, appointment, or dismissal authority over the other;

(2) One would directly or indirectly have authority over disciplinary action as to the other;

(3) One would audit, verify, receive, or be entrusted with money received or handled by the other in the course of employment; or

(4) One would have access to the employer’s confidential information, including payroll and personnel records.

For purposes of this guideline, a close relative is anyone of equal or greater relationship than a first cousin, which includes anyone descended from the employee’s grandparents. In addition, a close relative includes an employee’s spouse and anyone descended from that spouse’s parents.

When employees of the District become related and their working relationship is
prohibited by this guideline, one employee will be required to transfer to another position, provided a position is available, or to resign. If neither affected employee voluntarily transfers or resigns, the District shall terminate or transfer one of the employees, in its discretion.

Comment: No employer is required to have a nepotism guideline, and, if one is adopted, it can be much less restrictive than this one is. Colorado law prohibits discrimination against spouses except in the circumstances identified in this guideline, therefore, this guideline is as restrictive as it can be as to spouses. Employers may impose broader restrictions on the employment of relatives other than spouses. For the sake of consistency, this guideline treats all close relatives, including spouses, equally.

5.70 Temporary Employment

Employees who are hired for positions known to be of limited duration are considered temporary employees. A position is considered to be of limited duration if it is reasonably expected at the time the position is filled that the position will terminate in the foreseeable future, even though the precise termination date may not be known.

Temporary employees are not eligible to participate in any group insurance programs offered by the District and are not provided vacation, sick leave, maternity leave, parental leave, personal leave, bereavement leave, or injury leave, nor will the District provide any pay differential for military service, jury duty, or workers’ compensation to temporary employees. Temporary employees are paid for holidays only if worked.

Temporary employees are entitled to overtime compensation as provided for in these guidelines.

Comment: Temporary employees may, but need not, be provided some or all of the benefits available to other employees. Workers’ compensation, unemployment, minimum wage, and overtime pay and requirements apply to them.

5.80 Part-Time Employment

Any employee who is regularly scheduled to work less than _____ ( ) hours per week is considered a part-time employee. Part-time employees who are regularly employed for (___) hours or more per week are eligible for all leave time and benefits described in these guidelines, provided that such leave time shall accrue, and such benefits shall be paid for by the District only in the same proportion that the number of hours worked by the employee bears to forty (40) hours. Part-time employees regularly scheduled to work less than ___ hours per week accrue leave time in such proportion, however they are not provided paid insurance benefits. Such employees are eligible to participate in the District’s group insurance programs upon payment through payroll deduction of the full cost of such benefits.

Comments: The foregoing comments on temporary employees also apply to part-time employees. This guideline sets forth a common method of providing benefits to part-time employees, but is by no means mandatory. The last sentence of this guideline provides an example of a way to provide benefits for part-time employees. There is no requirement that benefits be made available to part-time employees.

5.90 Employee Appraisals

The District expects each of its employees to be appraised concerning his or her job performance at least annually. The appraisal process is intended to provide employees with information concerning their employment progress and to serve as a means of improving employee performance. The appraisal process is not meant to serve as a substitute for ongoing discussions between supervisors and employees.
Supervisors are expected to appraise each employee annually. This expectation is not intended to create a right to an annual appraisal, but rather imposes a duty on supervisors. Similarly, the District’s appraisal guideline is not intended to entitle employees to a specific method or standard of appraisal, but is intended to impose an affirmative obligation on supervisors to appraise employees regularly and consistently.

**Comment:** Employee appraisals are not required by law, but are useful for improving and evaluating employee effectiveness and documenting deficiencies.

**5.91 Appraisal Standards**

It is the responsibility of District management to develop appraisal standards. Written appraisal standards are to be maintained by each supervisor for the employees under his or her supervision. Whenever the nature of the job permits, appraisal standards should be objective indicators of job performance. All appraisal standards and other details of the District’s performance appraisal process shall be communicated by supervisors to the employees under their direction.

**Comment:** Objective standards alone may not be desirable or possible, but objective standards do help minimize claims of discrimination.

**5.92 Appraisal Process**

The appraisal process shall permit oral and written responses by employees, shall require annual written appraisals for each employee that are signed by the employee and the appraiser, and shall include review of each appraisal by the appraiser’s supervisor.

Each written appraisal shall become a part of the appraised employee’s personnel record.
6.00 LAYOFF/FURLOUGH

The District reserves the right to layoff or furlough employees for reasons of efficiency, economy, lack of work, or for such other reason as the Board of Directors deems sufficient. Employees who are laid off are eligible to continue health and dental insurance, if any, at their own expense as authorized by federal and state law.

(A) Laid off employees may apply for vacancies with the District and shall be afforded preference over new hires for positions for which they are qualified.

OR, IN THE ALTERNATIVE:

(B) The District shall maintain a list of laid off employees for a period of _ months. Employees will be recalled by the District to any vacancies for which they may be qualified in reverse order of lay off. After _ months a laid off employee shall not be eligible for recall but may apply for any vacancy with the District.

Comment: This guideline contemplates the possibility of furloughs and provides two of many possible alternatives describing re-employment rights of laid off employees. Employers have no obligation to afford laid off employees recall rights or hiring preferences, but may do so.
7.00    EMPLOYEE CONDUCT

7.10    General Rules of Conduct

The District expects all of its employees to act in the best interests of the District and its constituents. It is the responsibility of all employees to observe all rules, guidelines, operating procedures and directives of the District. The District further expects that each of its employees will behave with courtesy and respect toward other employees and members of the public. Specific rules of conduct adopted by the District or described in these guidelines are not meant to be all inclusive, but rather address some common and serious potential problems.

Comment: The following rules of conduct are totally discretionary, although the sexual harassment and conflict of interest guidelines are in large part reflective of legal requirements.

7.15    Dress and Appearance

All employees of the District must maintain an appearance that is neat, clean, and appropriate to the area in which the employee works.

Comment: Districts are free to set forth a more specific dress and appearance guideline, but should be sure to avoid imposing restrictions that could be viewed as discriminatory. Furthermore, districts may need to accommodate employees’ religious beliefs that require certain clothing or appearances, e.g., beards and head coverings.

7.20    Drugs and Alcohol

The District strictly prohibits the manufacture, distribution, use or possession on District premises of alcoholic beverages of any kind and drugs other than those prescribed by a physician or obtained from a legal over-the-counter source. Employees are expected to use prescription or legal over-the-counter drugs in an appropriate manner and dosage and are expected to know whether the appropriate use of such drugs may impair their ability to perform their jobs safely and competently.

No employee is permitted to report for duty while impaired by or under the influence of alcohol or drugs to the slightest degree. Any employee who reports to work impaired by or under the influence of drugs or alcohol shall be relieved of his or her duties immediately and without pay.

Any violation of this guideline will subject an employee to discipline, up to and including immediate discharge.

Comment: Colorado law permits the medicinal use of marijuana under certain circumstances. However, the amendment to the Colorado Constitution permitting such usage provides that nothing in it “shall require any employer to accommodate the medical use of marijuana in any work place.” Accordingly, Colorado employers are not currently required to adjust their employment practices to allow for the use of medical marijuana. No Colorado appellate courts have yet construed the constitutional amendment, but the matter seems ripe for litigation.
7.21 Reporting Convictions

Any employee who is convicted or pleads no contest under any criminal drug statute regarding a violation occurring on the job or in the workplace shall notify the District of the conviction or plea within five days. Failure to so notify the District may result in termination of employment.

Comment: The Drug-Free Workplace Act requires most employers who have federal contracts to prohibit unlawful use, possession, manufacture and distribution of controlled substances in the workplace; to establish drug free awareness programs; and to require employees to report workplace-related convictions for drug offenses.

7.22 Drug and Alcohol Testing

All District employees required to hold commercial drivers’ licenses shall be subject to a drug and alcohol testing program that fulfills the requirements of Code of Federal Regulations Title 49, Part 382. Tests shall be conducted under the following circumstances:

(a) Each such employee shall be tested before the first time they perform any safety-sensitive function for the District. Such functions including driving; waiting to be dispatched; inspecting and servicing equipment; supervising, performing or assisting in loading or unloading; repairing or obtaining and waiting for help with a disabled vehicle; performing driver requirements related to accidents; and performing any other work related to vehicle maintenance or operation. Pre-employment tests shall be required only after an applicant is offered a position.

(b) Alcohol and controlled substance tests shall be conducted after any accident involving any safety-sensitive function. Such tests shall be conducted as soon as is practicable following an accident if the accident involved personal injury, property damage, or a citation for a moving traffic violation. Employees involved in accidents shall make themselves available for testing unless they need immediate medical attention, and shall not use alcohol for eight hours after any accident or until after a post-accident alcohol test, whichever occurs first.

(c) Tests shall be conducted on a random basis at unannounced times throughout the year. Such random tests shall be conducted just before, during, or just after the performance of safety-sensitive functions.

(d) Tests shall be conducted when a supervisor or District official trained in accordance with law has reasonable suspicion that an employee has violated the District’s alcohol or drug prohibitions. Reasonable suspicion must be based on specific, contemporaneous observations concerning the employee’s appearance, behavior, speech or body odors. Such observations may include indications of the chronic and withdrawal effects of controlled substances.

(e) A drug or alcohol test shall be conducted if and when an employee who has violated the District’s drug or alcohol prohibition returns to performing safety-sensitive duties. No employee may be assigned to a safety-sensitive position until a return-to-duty drug test is administered with a negative result.
(f) An employee who violates the District’s drug or alcohol prohibition and is subsequently identified by a substance abuse professional as needing assistance in resolving a drug or alcohol problem shall be subject to unannounced follow-up testing as directed by the substance abuse professional in accordance with law. Such follow-up testing shall be conducted just before, during, or just after the performance of safety-sensitive functions.

Testing procedures and facilities used for tests shall conform with the Code of Federal Regulations, Title 49, Section 40, et seq.

Any driver who refuses to submit to a drug or alcohol test required by this guideline shall not perform or continue to perform safety-sensitive duties and will be subject to discipline up to and including dismissal. An employee will be deemed to have refused to submit to testing if he or she is unavailable or fails to provide samples sufficient for testing absent any medical necessity. Verified positive tests for alcohol or drugs shall subject employees to disciplinary action up to and including dismissal.

Comment: Federal regulations require that employees required to obtain commercial drivers’ licenses be given drug and alcohol tests under the circumstances set forth in this rule. Although the law does not require testing of other employees, any person employed in a “safety-sensitive” position probably can be required to submit to drug and alcohol testing under similar circumstances. A “safety-sensitive” position would be any position involving the operation or maintenance of motor vehicles or heavy equipment, the operation of potentially dangerous equipment, the use of a firearm, or the operation of water treatment equipment. If the use of drugs or alcohol in a position reasonably could threaten individual or public safety, it probably can be classified as “safety-sensitive.”

Any employee, whether employed in a safety-sensitive position or not, can be required to submit to drug and alcohol testing based on reasonable individualized suspicion.

The federal regulations impose a number of administrative requirements regarding drug and alcohol testing for commercial drivers’ licenses that are not set forth in this guideline because they relate to administrative operations, not personnel requirements. For example, federal regulations impose certain record-keeping requirements, require that commercial vehicle operators be provided with certain educational materials concerning testing and district guidelines, and require that commercial motor vehicle drivers be given post-accident procedures. Such requirements are more appropriate for an operations manual than for personnel guidelines.

7.30 Harassment

The District prohibits any harassment of its employees on the basis of sex, race, color, national origin, ethnicity, disability, religion, age, or sexual orientation.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other inappropriate oral, written or physical conduct of a sexual nature when:

a. submission to such conduct is made, either explicitly or implicitly, a term
or condition of an individual’s employment;

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 substantially interfering with an individual’s job performance or creating an intimidating, hostile or offensive employment environment.

Harassment based on race, color, national origin, ethnicity, disability, religion, age or sexual orientation consists of verbal or other conduct relating to any of those characteristics which has the purpose or effect of creating an intimidating, hostile or offensive working environment; which has the purpose or effect of substantially or unreasonably interfering with an individual’s work performance; or which otherwise adversely affects an individual’s employment opportunities.

Any employee who believes he or she has been the victim of prohibited harassment or who has observed such harassment is expected to report the harassment to his or her immediate supervisor or to ________________. In all events, prohibited harassment should be reported to a person in a position to take corrective action against the harasser, including, if necessary, members of the District’s Board of Directors.

Upon notification of prohibited harassment, a supervisor shall notify the District’s chief personnel officer [or other appropriate manager]. The District’s chief personnel officer [or other appropriate manager] shall immediately investigate, take action to prevent and remedy any harassment, and report his or her findings and course of action to appropriate District administrators and the complaining party. Investigations of reported harassment and the results of such investigations will be kept confidential to the extent possible, given the need for a complete and fair investigation.

Employees shall not be subject to retaliation for making good faith complaints or reports of prohibited harassment.

If prohibited harassment is found to have occurred, the District shall take such disciplinary action against the harassing party as it deems necessary and appropriate, including warning, suspension, or immediate discharge.

Comment: The U.S. Supreme Court has recognized that employers can defend against certain harassment claims if employees have failed to act reasonably to prevent or correct the harassment. To establish this defense, an employer must show that it has an effective policy and practice prohibiting harassment and that employees have been advised of the means by which they may invoke employer assistance to prevent and remedy harassment. It is important that any guideline identify more than one person to whom complaints may be brought, as the person responsible for fielding complaints may be the perpetrator.

Once an employee reports harassment or a supervisor reasonably should be aware of it, an employer may be liable. It is essential to investigate possible harassment immediately and thoroughly, and to take prompt remedial action, if warranted.

7.40 Use of District Property

District property is to be used only for official District business, in an appropriate manner, and in accordance with all applicable rules, operating procedures, or directives. No employee shall remove District property or the property of any other employee from District premises or work sites without proper authorization. Any employee who steals District property or the property of any other employee, or who abuses, misuses, damages, or destroys District
property shall be subject to discipline, up to and including immediate discharge.

7.50 Use of District Vehicles

District vehicles may be used only for the purpose and in the manner authorized by the District. Only authorized and qualified District employees may operate District vehicles. All vehicles shall be operated in accordance with all applicable traffic laws and vehicle operators shall be responsible for the condition and proper use of their vehicles.

Unauthorized or improper use of District vehicles may result in discipline, up to and including discharge.

7.60 Conflict of Interest

District employees shall not place their personal interests above the best interests of the District or Board’s constituents. Accordingly, employees of the District shall not:

1. Engage in a substantial financial transaction for private business purposes with another employee whom he or she supervises;

2. Take any official action directly and substantially affecting to its economic benefit a business or other undertaking in which he or she has a substantial direct or indirect financial interest or business arrangement;

3. Disclose or use confidential information acquired in the course of his or her official duties to further substantially his or her personal financial interests; or

4. Accept a gift of substantial value or a substantial economic benefit which might tend improperly to influence him or her in the discharge of his or her responsibilities, or which could be construed as a reward for action taken in the course of official duties.

Any employee who knows or reasonably should know he or she has a potential conflict of interest shall disclose such potential conflict to his or her supervisor.

Comment: This guideline incorporates the requirements of Colorado law applicable to employees of special districts. Specific conflict of interest issues may require legal advice. A district may adopt ethics or conflict of interest rules imposing additional requirements should it so desire.

7.70 Polygraph Tests

(A) While investigating alleged employee wrongdoing in the course of official business of the District, the District may require that an employee or employees take polygraph examinations. Polygraph examinations shall be given only under the following conditions:

1. There shall be a reasonable basis to believe that any employee to be tested may have knowledge material to the investigation;

2. Each employee to be tested shall be advised in advance that his or her answers cannot be used in any criminal proceeding;
3. Each employee to be tested shall be advised that questions asked will relate specifically and narrowly to district business; and

4. Each employee to be tested shall be advised in advance that he or she may be terminated for refusal to take the polygraph examination.

OR, AS AN ALTERNATIVE:

(B) While investigating alleged wrongdoing in the course of official business, the District may request that an employee take a polygraph examination or may offer an employee the opportunity to take such an examination. No employee, however, may be disciplined or discharged for refusing such a request or declining such an offer. If an employee agrees to take a polygraph examination, he or she may terminate the examination at any time without penalty.

Comment: Courts generally take a dim view of polygraph examinations. Some courts have held that mandatory polygraph examinations offend public policy or have refused to permit employers to terminate employees for their refusal to take such exams. Other courts have permitted mandatory polygraph exams and have upheld employee terminations resulting from refusal to take such exams. Mandatory polygraph examinations are more likely to be upheld for police officers, and to a lesser extent, firefighters, than for other public employees. No Colorado appellate court has yet addressed this issue.

Some states’ courts which have approved mandatory polygraph examinations have established certain guidelines concerning the administration of such examinations. The guideline set forth in paragraph (A) summarizes these requirements. It cannot be predicted whether the Colorado courts will endorse mandatory polygraph examinations even if these guidelines are followed, however any employer would be well-advised to include these guidelines in any mandatory polygraph guideline. The guideline set forth in paragraph (B) leaves it up to each employee to decide whether to take a polygraph exam.

7.80 Off-Duty Conduct

The District reserves the right to take appropriate action including dismissal from employment, in response to off-duty conduct of employees which:

(a) Relates to a bona fide occupational requirement or is reasonably and rationally related to the employment activities and responsibilities of the employee; or

(b) Is necessary to avoid a conflict of interest or the appearance of such a conflict with any of the employee’s responsibilities.

Comment: This guideline reflects the requirements of § 24-34-402.5 C.R.S., as to lawful off-duty conduct. Employers may not terminate an employee for lawful off-duty conduct unless one of the requirements of the guideline is met. Employers ordinarily have considerably more discretion in terminating employees for unlawful off-duty conduct. Note that no court has yet construed this statute together with the constitutional amendment permitting medical marijuana use.

7.90 Whistleblowing

No director, officer, or employee who in good faith makes a report or raises a concern about the District shall suffer harassment, retaliation, or adverse employment consequence. Anyone who retaliates against someone who has in good faith reported a wrong
doing or suspected wrong doing will be subject to disciplinary action up to and including
termination of employment.

Employees should share their questions, concerns, suggestions or complaints with
their immediate supervisor. If the employee is not comfortable speaking with their supervisor or
not satisfied with the supervisor’s response, the employees should report the concern to Human
Resources or Senior Management. Human Resources or Senior Management will communicate
reported violations or concerns to the Executive Director. The Executive Director will work
with Human Resources and/or Legal Counsel to determine how violations or concerns will be
addressed and communicated to the Board of Directors.

Anyone filing a complaint concerning a violation or suspected violation of this
policy must be acting in good faith and have reasonable grounds for believing the information
disclosed indicates a violation. Any allegations that prove not to be substantiated and which
prove to have been made maliciously or knowingly to be false will be viewed as a serious
disciplinary offense.

Reports of violations or suspected violations will be kept confidential to the extent
possible, consistent with the need to conduct an adequate investigation.

Comment: The Colorado Court of Appeals recently determined that § 24-34-402.5 C.R.S.
covers employee whistleblowing. Enforcement of this guideline may help to stave off a claim
under that statute by an employee who claims he was retaliated against for whistleblowing.
8.00 DISCIPLINE

The District expects all employees to conduct themselves pursuant to the highest professional, business, and ethical standards and will not tolerate misconduct. The District, through its Board of Directors, management, and supervisors, retains the right to take such disciplinary action as it deems appropriate in any given circumstances. Whether an employee’s performance, conduct, or behavior warrants disciplinary action is within the District’s discretion. The District does not intend by these guidelines to create any expectation that any employee will be assured of any particular form of disciplinary action, such as warnings, notice, or any form of progressive discipline, prior to discharge.

Comments: Employers are free to adopt their own disciplinary guidelines, but must take care in doing so if they wish to preserve at-will employment. These guidelines are drafted with an eye toward preserving at-will employment.

This general guideline is intended to place employees on notice that the district retains discretion in the application of discipline. Particular offenses for which an employee may be disciplined are not listed; this approach is taken to avoid any sort of argument that an employee was not aware that an action was prohibited simply because it was not listed.

8.10 Disciplinary Action

The level of discipline to be imposed for an infraction shall be that which the District, through its Board of Directors, managers, or supervisors, deems appropriate under the circumstances. District management retains the right to determine in its discretion, that any of the following disciplinary actions is appropriate without using lower levels of discipline first.

Disciplinary action may include:

1. A verbal warning or reprimand, which may be accompanied by a written notation in the supervisory record or in the employee’s personnel file.

2. A written reprimand, signed by the employee’s supervisor and acknowledged by the employee. Written reprimands are intended to be placed in the reprimanded employee’s personnel file. Employees may provide written explanations or responses to reprimands for placement in their personnel file.

3. Suspension without pay. A suspension without pay shall be accompanied by a written statement, signed by the employee and his or her supervisor, setting forth the fact of the suspension, the reason for the suspension, and the duration of the suspension.

4. Demotion. All disciplinary demotions must be reflected by a written statement placed in the demoted employee’s personnel file stating that the demotion was for disciplinary purposes and setting forth the reason for the discipline.

5. Termination.

Comment: Progressive discipline is not required by law, nor is there any prescribed format for such discipline. Nevertheless, it is generally recognized that progressive discipline is sound management practice, and if an employer has a “just cause” for dismissal policy, progressive discipline is ordinarily considered mandatory except for very serious offenses. This sample
guideline is necessarily general. The particular practices or organizational structure of a given
district may call for a more detailed guideline and should be reviewed by district counsel. This
guideline does not mandate progressive discipline in every instance, rather it preserves a
district’s right to determine whether progressive discipline is required.

Supervisors should ordinarily discuss disciplinary action with affected employees. Employees
should be advised of the reasons for the discipline, the supervisor’s expectations concerning
future conduct, and the consequences of any further conduct such as that which led to the
discipline. An employee should be given an opportunity to respond to any disciplinary action.
Such response may be in writing and may be placed in the employee’s personnel file.

A district is not required to permit written employee responses to disciplinary action or appeals
of such action unless the district has limited its right to terminate employees at will, in which
case due process considerations require notice of charges and an opportunity to respond in a
hearing. Considerations of fairness and sound management practices aside, however, employee
responses to disciplinary action often prove useful when an employer must subsequently
establish the circumstances of disciplinary action.
9.00 GRIEVANCES

The District has established a grievance procedure which is available to any non-supervisory employee for the resolution of complaints, disputes, or concerns regarding the interpretation or application of District guidelines. Any such dispute, complaint, or concern may be raised as a grievance pursuant to the grievance procedure.

Comments: Employers are not required to have grievance procedures. These guidelines describe a three-step procedure that ends with the district’s chief executive officer. Any district could adopt a grievance procedure ending at the board level, or even ending in arbitration, depending upon the needs of the district.

9.10 Purpose of Grievance Procedure

The grievance procedure is intended to provide a formal process for the resolution of grievances. It is not, however, intended to be a substitute for healthy and appropriate communication between employees and supervisors, nor is it intended that the grievance procedure be used to harass supervisors or interfere with the operations of the District. Before the grievance procedure is started, employees should attempt to resolve disputes, complaints, and concerns with their immediate supervisors by discussing such matters informally.

9.20 Grievance Procedure

The grievance procedure shall consist of the following steps:

Step 1. An employee may present a written complaint to his or her immediate supervisor setting forth the subject of the grievance and requesting consideration pursuant to this procedure. The employee and the supervisor shall confer on the matter and the supervisor shall respond to the complaint, orally or in writing, within ___(__) working days. A supervisor shall advise the Human Resources Director [or other appropriate person] of the grievance.

Step 2. If the grievance is not resolved at Step 1, the employee may, within ___(__) working days of the supervisor’s response, request in writing that a meeting be held between the employee and [the Human Resources Director, department head, or next level supervisor, whichever is appropriate]. Such request shall also specify the nature of the grievance. The employee and [appropriate person] shall meet as soon as is practicable thereafter and [the appropriate person] shall respond to the grievance in writing within ______ (__) working days of that meeting, circumstances permitting.

Step 3. If the grievance is not resolved at Step 2, the employee may, within _____ (__) working days after receiving the Step 2 response, request in writing that a meeting be held between the employee and [the District’s Chief Executive Officer]. The employee and [the Chief Executive Officer] shall meet as soon as is practicable and [the Chief Executive Officer] shall respond to the grievance within ___(__) working days, circumstances permitting. The decision of the [Chief Executive Officer] shall be final.

Any grievance not pursued to the next step within the time specified will be
considered resolved. The time limits for taking any action under this guideline may be extended by agreement. The failure of any District supervisor to respond to a grievance within the time limits specified in this guideline or agreed upon should be reported to the [Human Resources Director or other appropriate person]. An employee filing a grievance shall have the sole right to determine whether to pursue a grievance from one step to the next.
10.00 EMPLOYEE RECORDS

10.10 Personnel Records

Personnel records are retained by the District concerning all employees. Such records ordinarily include applications, insurance forms, payroll deduction authorizations, performance appraisals, certain pay records, transfer and promotion forms, records of disciplinary action, training records, and any certificates or credentials required for an employee’s job. Other information concerning employees may be kept as personnel records, in the discretion of the District.

In order to keep personnel records current, the Human Resources Department [or appropriate person] must be notified of any change in any employee’s address, phone number, marital status, or military status; any birth or death in any employee’s immediate family; any change in the name or telephone number of the person to be notified in case of emergency; any change in insurance beneficiary; or any other information needed to maintain accurate records. Each employee is responsible for providing the District with records concerning any licenses or certificates required for the performance of his or her job, as well as any documents showing that education or training relevant to employment has been completed.

Comments: Personnel records guidelines are not required by law. It is useful to advise employees of the need to keep the district informed of changes in basic information ordinarily required by the district.

10.20 Release of Information

Personnel records are considered confidential subject to statutory requirements. Employees may examine their own personnel records, except for letters of reference, by contacting the Human Resources Department [or appropriate person]. Employees may authorize the release of specified personnel records by executing a written request designating the record(s) to be released and the person or entity to whom they may be released.

No personal information on past or present District employees shall be provided by the District via telephone inquiries, except to confirm or deny information presented by a third party. Responses to requests by mail shall be limited to confirmation of documented information provided by a third party, unless such requests for information are accompanied by an authorization to release the information requested, signed by the employee.

A copy of any written information sent to a third party concerning a former or current employee shall also be sent to the last known address of the employee.

Comments: Employees have a statutory right to review their personnel files, except for letters of reference. Special districts are required to keep personnel records confidential except for employment applications, employment agreements, any amount paid or benefit provided incident to termination of employment, performance ratings, and any compensation, including expense reimbursement, made to any employee.

The third paragraph of this guideline reflects a requirement of Colorado law.
11.00 SEPARATION FROM EMPLOYMENT

An employee may separate from employment by disciplinary termination, layoff, resignation, or retirement.

11.10 Disciplinary Termination

Employees who are terminated for disciplinary reasons are not eligible for rehire. Such employees shall be paid for accrued but unused compensatory time and vacation, but shall not be paid for accrued but unused sick leave. Employees who are dismissed for disciplinary reasons may be entitled to continue coverage under the District’s group health and dental insurance programs at their own expense as provided by state and federal law.

Comment: This guideline summarizes what is required of employers when employees are discharged for disciplinary reasons.

11.20 Layoff

Employees who are laid off are eligible for rehire. At the time of layoff, employees shall be paid for accrued but unused compensatory time and vacation, and for accrued but unused sick leave at ________ (___) their regular rate of pay. Laid off employees are eligible to continue coverage under the District’s group health and dental insurance programs at their own expense as provided by state and federal law.

Comment: Laid off employees are entitled to be paid for unused compensation time and vacation and to continue group health and dental insurance at their expense for such time as the law requires. Any additional payments or benefits are optional.

11.30 Resignations

An employee who resigns in good standing is eligible for re-employment with the District. An employee resigns in good standing if she/he does not resign under threat of discharge, gives the District at least _____ (___) weeks notice, and completes necessary exit forms.

Employees who resign shall be paid for all accrued but unused compensatory time and vacation, and for accrued but unused sick leave at ________ (___) their regular rate of pay [or one-half their regular rate of pay].

Comment: Employees who resign are entitled to be paid in full for accrued but unused compensatory time and vacation upon separation, but need not be paid for accrued but unused sick leave. At the employer’s discretion, they may be paid for some or all accrued but unused sick leave. The first paragraph of this guideline is primarily intended to encourage employees to give advance notice of impending resignations. The updated version of this guideline removes language contemplating the withdrawal of resignations in order to eliminate the argument that the district committed an adverse employment action when it declined to permit such withdrawal.
11.40 Retirement

Employees who retire are not eligible for rehire. Upon retirement employees shall be paid their accrued but unused compensatory time, vacation and sick leave.

Comment: As with other forms of separation, retiring employees need not be paid for unused sick leave.

11.50 Exit Procedure

Employees who are laid off, resign, or retire shall contact the Human Resources Department [or appropriate person] to provide all information required for separation and to make arrangements concerning final pay, payment for accrued leave, and continuation of benefits.
12.00 MISCELLANEOUS GUIDELINES

12.10 Political Activity

Any District employee has the right as a citizen to participate fully in the political process. No District employee, however, shall campaign for any candidate or cause on District time or using District resources. No District employee shall publicly campaign for any candidate or cause while wearing a District uniform or District insignia.

Comment: Public employees have a First Amendment right to engage in political activity, but they do not have the right to use public resources to influence elections. Any restrictions on employee political activity should be carefully formulated to ensure district neutrality in elections, not to inhibit legitimate First Amendment activity of employees.

12.20 Board Membership of Employees

A board member may not be employed by the district.

Where a board member applies for employment with the district, he or she must resign from the board if employment is offered and accepted. No board member may begin employment with the district until after the effective date of his or her resignation.

Where an employee of the district is elected to the district board, he or she must take a leave of absence for his or her term of office [or must resign his or her employment with the district]. Failure to do so shall result in termination of employment.

Comment: § 32-1-902(3), C.R.S., effectively precludes district directors from district employment by prohibiting a director from receiving compensation as an employee of the special district on whose board he or she serves. At minimum, therefore, an employee elected to a district board must take an unpaid leave of absence during his or her term of office. A district is not required to grant a leave of absence under such circumstances, however. An employee may be required to resign or be terminated if he or she wishes to serve on the board.

A board probably can adopt a broader guideline than this one, i.e., a guideline prohibiting employment of board member spouses or other close relatives of board members. Guideline 5.60 regarding nepotism could be applied to relatives of board members as well as to relatives of employees.
12.30 Smoking

Smoking and other tobacco use are not permitted anywhere in the District’s indoor facilities, within fifteen (15) feet of any doorway leading into a District indoor facility, or in any other area where the District prohibits smoking or other tobacco use.

Comment: The Colorado Clean Indoor Air Act, § 25-14-201, C.R.S., et seq., prohibits smoking in any indoor facilities of public buildings. The Act also prohibits smoking within a fifteen foot radius of any doorway leading into a public building, although a district may designate a larger or smaller radius. Districts may also designate outdoor areas where smoking is prohibited.

12.40 Expenses

The District reimburses employees for expenses reasonably incurred in the course of District business, provided such expenses have been authorized in advance or are determined by the District, in its discretion, to have been necessarily incurred under circumstances where advance approval was not reasonably possible. Employees seeking reimbursement for expenses will ordinarily be required to document those expenses.

The District shall not approve meal expenses per person, including tips, greater than $___ for breakfast, $____ for lunch, and $____ for dinner.

The District shall reimburse employees for use of their personal vehicles on District business at the rate of $___ per mile.

All requests for reimbursement for expenses shall be submitted on the District’s expense form.

12.50 Outside Employment

Any employee of the District who wishes to engage in outside employment shall notify his or her immediate supervisor [or other appropriate person] prior to accepting such employment. The employee’s supervisor shall contact the Human Resources Director [or other appropriate person] for approval of such outside employment.

No District employee shall engage in outside employment which interferes with the proper and effective performance of his or her duties or attendance requirements, including overtime work, or that results in a conflict of interest. Requirements of employment with the District shall have priority over any requirements of outside employment.

12.60 Health Examinations

The District reserves the right to require physical or psychological examinations of any District employee, at District expense, as follows:

a) to determine the ability of an applicant who has been offered employment to perform job-related functions required by business necessity. [In the alternative: All applicants who are offered employment shall be examined;]
b) when there is a need to determine whether an employee is able to perform the essential functions of his or her job;

c) as may be required to determine the necessity or feasibility of reasonable accommodations for a disability;

d) periodically, as may be necessary to comply with fitness for duty or monitoring requirements imposed by law.

Results of all physical or psychiatric examinations shall be treated as confidential records by the District and shall be maintained separately from District personnel records.

**Comment:** Colorado law requires that employers pay for mandatory health examinations.

The Americans with Disabilities Act restricts the right to require employee examinations for employers with more than 14 employees. EEOC regulations permit physicals in the circumstances outlined in this guideline. Certain terms used in this guideline, such as “essential functions” and “business necessity” may require consultation with legal counsel in any given instances. Note that subparagraph (a) is presented in the alternative.

### 12.70 Desks/Lockers/Storage/Inspections

The District reserves the right to open and enter any office, desk, locker, file cabinet, or other storage location within District premises and to inspect District vehicles and any containers brought into the workplace. Although an employee may be assigned an office, desk, vehicle, locker, file cabinet, or other storage area or device, such assignment does not create an expectation of privacy in the use of such items or areas.

**Comment:** A public employer’s right to search offices, desks, lockers, or file cabinets is not absolute. This guideline is intended to clarify the District’s right of access to such places.

### 12.80 Staff Use of District Computer Resources

All District computers and other devices, including cellular phones, must be used in a responsible, efficient, ethical and legal manner. Failure to adhere to this guideline may result in revocation of access privileges and may result in disciplinary action, including termination.

Employee use of District computers and other devices, including cellular phones, must be consistent with the objectives of the District. Transmission or access of any material in violation of any U.S. or state law or regulation is prohibited, as is transmission or access of non-work-related material. Access to sexually-oriented material is specifically prohibited. The District reserves the right to determine what use of District computers and other devices, including cellular phones, in the workplace is appropriate.

Internet transactions and e-mail and text messages are not private. District staff and administrators may monitor these transactions and messages at any time, for any reason...
without notice to the user.

Security on the District’s computer network is a high priority. The District is to be notified of known or suspected security problems. Any user identified as a security risk, or as having a history of problems with other computer systems, may be denied access to the internet.

Vandalism will result in cancellation of privileges. Vandalism is defined as any malicious attempt to harm or destroy data of another user, or any agencies or other networks that are connected to the internet. This includes, but is not limited to, the uploading or creation of computer viruses.

Without specific permission from the District, staff members are prohibited from accessing fee services via the internet. If such services are accessed, the staff member will be responsible for any fee or cost involved.

All employees shall be required to agree in writing to the conditions of this guideline, and to such other terms and conditions as the District may require, as a condition to use of District computers and other devices, including cellular phones, in the workplace.

Comment: The update to this guideline contemplates employees’ usage of cellular phones to access the internet and send text messages. If a particular district does not permit employees to communicate via text message using cellular phones, mention of the prohibition should be made here.

12.90 Staff Use of Electronic Mail

Electronic mail is an electronic message that is transmitted between two or more computers or electronic terminals, whether or not the message is converted to hard copy format after receipt and whether or not the message is viewed upon transmission or stored for later retrieval. Electronic mail includes all electronic messages that are transmitted through a local, regional, or global computer network.

All District electronic mail systems are owned by the District and shall be used for the purpose of conducting official District business only. All other uses, including personal use, are prohibited.

Users of District e-mail systems are responsible for their appropriate use. All illegal and improper uses of the electronic mail system, including but not limited to pornography, obscenity, harassment, solicitation, gambling and violating copyright or intellectual property rights are prohibited. Use of the electronic mail system for which the District will incur an expense without express permission of a supervisor is prohibited.

Electronic messages are not for private or confidential matters. Because there is no guarantee of privacy or confidentiality, other avenues of communication should be used for such matters.

In order to keep District electronic mail systems secure, users shall not leave the terminal signed on when unattended and shall not leave their password available in an obvious
place near the terminal or share their password with anyone except the electronic mail system administrator.

Electronic messages are not private. The District retains the right to monitor, review, store and disclose all information sent over the District electronic mail system at any time for any reason, without notice to the employee.

Except as provided herein, District employees are prohibited from accessing another employee’s electronic mail without the express consent of the employee. All District employees are advised that electronic mail messages can be retrieved even if they have been deleted and that statements made in electronic mail communications can form the basis of various legal claims against the individual author or the District.

Electronic mail sent or received by the District or the District’s board of directors and employees may be considered a public record subject to public disclosure or inspection under the Colorado Open Records Act.

District employees shall be subject to disciplinary action, including termination, for violation of this guideline and regulation.

All District employees shall sign an acknowledgment form stating they have received and read the guideline and regulation. The form will be maintained in the employee’s personnel file.
13.00 EMPLOYEE ACKNOWLEDGEMENT

I acknowledge that I have received a copy of the employment guidelines of the ____________________________ (the “District”). I understand that these guidelines do not constitute a contract and impose no legal obligation of any kind on the District.

I understand that the District reserves the right to change or rescind these guidelines at any time, as well as the right to determine their meaning, purpose, and effect. I also understand that the District reserves the right, in its sole discretion, to determine whether, and to what extent, these guidelines should be applied in any given circumstances.

I understand that my employment with the District is at-will, and may be terminated at any time, with or without cause, a statement of reasons, or a hearing, and that I may resign at any time, for any reason.

_______________________________________
Printed Name

_______________________________________
Signature

_______________________
Date

Comment: A copy of this signed acknowledgement should be placed in each employee’s personnel file. Each time the handbook is revised, employees should re-execute the acknowledgement.