

Van Buren County Personnel Policy (2023)

- 1. Introduction and Purpose p5
- 2. County Policy Directives p5
- 3. County Employment Policies p6
 - A. At-Will Employment p6
 - B. Claims of Property Interest in Employment p6
 - C. Equal Employment Opportunity p7
 - D. Anti-Harassment Policy p7
 - E. Disabilities Policy p8
 - F. Genetic Information Nondiscrimination Policy p8
 - G. Immigration Reform and Control Acts p9
 - H. Political Activity p9
 - I. Social Media Policy p9
 - J. Freedom of Information Act p10
 - K. County Property p10
 - L. Technology Policy p10
- 4. Hiring, Promotion and Demotion, Transfer, and Termination p11
 - A. Hiring p10
 - B. Reduction or Removal of Pay or Position p11
 - C. Constitutionally-Protected Conduct p12
 - D. Background Investigations p12
 - E. Drug-Free and Alcohol-Free Workplace Policy p12-15
 - (1) Testing
 - (2) Prescription Drugs, Over-the-Counter Drugs, and Medical Marijuana
 - (3) Post-Offer / Pre-Employment Testing
 - (4) Safety-Sensitive Positions
 - (5) Testing of Safety-Sensitive Employees
 - (6) Random Testing of Safety-Sensitive Employees
 - (7) Reasonable-Suspicion Testing of Safety-Sensitive Employees
 - (8) Post-Accident Testing
 - (9) Disciplinary Action
 - (10) Records
 - F. Employee's Last Paycheck p15
- 5. Employee Classification, Attendance, and Compensation p15
 - A. Employee Classifications p16
 - B. Employee Compensation p16
 - C. Employee Attendance p16

- D. Overtime Work and Compensatory Time p16
 - E. Overtime and Leave Time Liability Control Procedure p18
 - F. No County Gifts p19
 - G. Catastrophic Leave p19
 - H. Donated Leave p21
 - I. Bereavement p21
- 6. Administrative Leave and other Benefits p22**
- A. Group Insurance Programs p22
 - B. Holiday Leave p22
 - C. Vacation Leave p23
 - D. Paid Leave (Sick Leave and PTO) p24
 - E. FMLA Leave p24-p27
 - (1) Employee Eligibility Criteria
 - (2) Qualifying Events for FMLA Leave
 - (3) "Serious Health Condition"
 - (4) Pay Status During FMLA Leave
 - (5) How Much FMLA Leave May be Taken
 - (6) Intermittent or Reduced Work Schedule Leave
 - (7) Notice
 - (8) Medical Certification
 - (9) Designation of FMLA Leave
 - (10) Continuation of Benefits
 - (11) Return from FMLA Leave
 - (12) FMLA Rights and Obligations
 - F. Leave Without Pay p27
 - G. Military Leave p27
 - H. Jury Duty Leave p27
 - I. Other Premium Pay p28
 - J. Inclement Weather Leave Time and Other Emergency Leave Time p28
- 7. Informal Procedure for Reporting/Resolving Perceived Harassment and other Job-Related Complaints p28**
- A. Purpose
 - B. Affirmative Duty to Report
 - C. Affirmative Duty to Act
 - D. Continuing Duty to Report
 - E. Confidentiality
 - F. No Adverse Employment Action
- 8. Grievance Hearing Procedure p29**
- A. Purpose

- B. County Grievance Committee
- C. Timely Grievance Hearing Request Required
- D. Back Pay Provisions when an Employment Decision is Reversed
- E. Written Response to Hearing Request Required
- F. Mediator Role of County Judge
- G. Hearing Procedure

BOOK 2023
PAGE 58

9. **Grievance Hearing Issues and Burdens of Proof p32**
 - A. Property Interest Hearing—Claim of Property Interest in Employment
 - B. Liberty Interest Hearing—Claim of Unconstitutional Retaliation
 - C. Liberty Interest Hearing—Claim of Disability Discrimination
 - D. Liberty Interest Hearing—Claim of No Rational Basis for Different Treatment
 - E. Liberty Interest Hearing—Claim of Arbitrary Decision—No Legitimate County Objective
 - F. Liberty Interest Hearing—Claim of Arbitrary Decision—Violation of State Public Policy
 - G. Name Clearing Hearing—Claim of Deprivation of Liberty Interest in Future Employment

10. **Issues Not Addressed in the Personnel Policy p34**

Welcome to employment with Van Buren County, Arkansas (the County). The purpose and intent of this County Personnel Policy is to establish at-will employment as the default employment policy for the County and to state the general employment policies issued by the County Quorum Court in its capacity as the legislative branch of County government. *See* Ark. Const. Amend. 55 §§ 1 & 4; Ark. Code Ann. § 14-14-805(2). The Policy is also intended to establish uniform personnel policies and benefits for all County employees.

County employees are “at-will” employees. County employment is not for a specific period and employment may be terminated at any time, with or without notice, and with or without cause. The provisions set forth in this Personnel Policy do not guarantee any fixed terms or conditions of employment. The Policy neither creates an expectancy of future employment nor establishes grounds upon which employee discipline or dismissal must be based. At any time, the County Quorum Court may revise, supplement, or rescind the policies, practices, and benefits set forth in the Policy subject to, or as may be required by, applicable law.

Consistent with the day-to-day administrative responsibility of his or her elected office, a County elected official may adopt executive employment policies to apply to the employees of that office. Such executive employment policies shall not conflict with this uniform Personnel Policy adopted by the Quorum Court. A County elected official has discretion to determine the application, meaning, and intent of the provisions of the Personnel Policy as they relate to the employees of that official’s office. *See* Ark. Code Ann. § 14-14-805(2).

Any County employee is entitled to request a hearing before the County Grievance Committee (after a period of Mediation defined later in this policy) in the event the employee believes that the executive decision of a County elected official or other supervisor violates the state or federal constitution, state or federal law, or state public policy.

We are serious about the important work of the County. We are equally serious about adhering to the procedural and substantive requirements of applicable law. County employees are expected to read, understand, and comply with the policies set forth in the County Personnel Policy. Any questions should be directed to a supervisor.

2. County Policy Directives

A. The County and its officials will treat all employees and citizens in a manner that is: (i) rationally related to the effectuation of legitimate County objectives; and (ii) uniformly applied to all persons similarly situated.

B. County officials and employees shall not misuse or abuse governmental power.

C. County officials and employees shall not engage in any intentional act that is illegal (contrary to applicable statutes or judicial decisions) or unconstitutional (contrary to the Arkansas Constitution or the United States Constitution).

D. County officials and County employees shall not omit the performance of any duty that is affirmatively required by applicable law (statutes and judicial decisions).

E. County officials and employees shall not participate in any County contract or transaction in which they have a direct or indirect personal interest. County officials and employees shall not accept or receive any property, money, or anything of value in exchange for or arising out of any County contract or transaction. *See Ark. Code Ann. § 14-14-1202.*

F. County officials and employees shall not engage in any act that would constitute corruption, gross immorality, criminal conduct, malfeasance, misfeasance, or nonfeasance in office. *See Ark. Code Ann. § 14-14-1311.*

G. Each County elected official shall administer the day-to-day administrative affairs of his or her County office in a lawful and constitutional manner, and in accordance with applicable law (statutes and judicial decisions), the U.S. Constitution and Arkansas Constitution, and this County Personnel Policy.

H. Every employee is subject to a six (6) month employment probationary period. An employee may be dismissed during this period without recourse to the grievance procedures, except in cases where the dismissal is alleged to be illegal or unconstitutional.

3. **County Employment Policies**

A. **At-Will Employment.**

(1) Under its authority as the legislative branch of County government, the County Quorum Court adopts "at-will" employment as the default employment policy for each County employee. County employment is not for a specific period and employment may be terminated at any time, with or without notice or liability of any kind (except for wages earned and unpaid), and with or without cause.

(2) A County employee serves at the pleasure of the elected County official who hires and supervises the employee. Newly elected County officials have the discretion to rehire County employees who served under a predecessor. County employees have no expectancy of continued employment or property interest in future employment under a newly elected County official.

B. **Claims of Property Interest in Employment.** If, notwithstanding the express provisions to the contrary in this County Personnel Policy, a County employee contends that he or she has a property right in his or her employment or a substantial expectancy of continued employment, or that the County or supervising elected County official must have just cause for reduction in pay or removal of position, then the employee must assert such contention at a grievance hearing requested in the time and in the manner set forth in this Policy.

C. Equal Employment Opportunity. It is the policy of the County to provide equal employment opportunity for all County employees. Accordingly, the County will not engage in any form of employment discrimination based on race, color, national origin, sex or gender, religion, age, disability, veteran or military status, genetic information, or any other legally-protected status. The County hereby affirms its desire to maintain a work environment for all County employees that is free from all forms of unlawful employment discrimination. Employment discrimination based on race, sex or gender, color, national origin, religion, age, disability, veteran or military status, genetic information, or any other legally-protected status is a violation of County policy as well as federal and state law, and will not be tolerated.

(1) If you believe you have been the subject of unlawful employment discrimination, you should **immediately** report the problem to your supervisor. If the conduct or condition allegedly involves your supervisor, you should report it immediately to the elected County official under whom you serve. If the conduct or condition allegedly involves the elected County official, you should immediately report the conduct or condition to the County Judge. If the conduct or condition allegedly involves the County Judge, you should immediately report the conduct or condition to the County Grievance Committee. "Immediately" normally means the same day of the alleged discrimination. The failure to make a timely report of alleged discrimination may be a factor used in deciding the merits of the allegation. Your complaint will be promptly investigated. All County employees are expected to cooperate fully in such investigations. To the extent feasible, all internal investigations and/or actions taken to resolve complaints of unlawful employment discrimination will be confidential.

(2) Retaliation against any County employee for making a complaint under this policy or for providing information during an investigation under this policy is strictly prohibited, will not be tolerated, and is a violation of this policy.

(3) Any County employee who violates this policy will be subject to appropriate discipline, up to and including termination. Any supervisor who knowingly permits discrimination or retaliation to take place in his or her areas of supervision will be subject to appropriate discipline, up to and including termination.

D. Anti-Harassment Policy. The County provides a workplace free from harassment based on race, color, national origin, sex or gender, religion, age, veteran or military status, genetic information, disability, or any legally-protected status. Harassment includes any verbal or other conduct that demeans, insults or intimidates an employee or group of employees because of their race, color, national origin, gender, religion, age, veteran or military status, genetic information, disability, or other legally-protected status. Prohibited conduct includes, but is not limited to, jokes, labels, names, verbal abuse, ridicule or stories offensive to a protected group of persons.

(1) Because of the County's strong disapproval of offensive or inappropriate sexual behavior at work, all employees must avoid any action or conduct which could be viewed as sexual harassment, including:

1. Unwelcome sexual advances, including unwelcome requests for dating and requests for sexual acts or favors.
2. Verbal abuse of a sexual nature, including sexually-related comments or joking and graphic or degrading sexual comments about another's appearance.
3. Nonverbal abuse of a sexual nature, including suggestive or insulting noises, leering, whistling or making obscene gestures, e.g., giving someone the finger, and the display of sexually suggestive objects or pictures.
4. Physical conduct of a harassing nature, including inappropriate touching or brushing the body of another.
5. Any other verbal, nonverbal or physical conduct of a harassing nature.

(2) If you believe you have been the subject of harassment by anyone, including supervisors, elected County officials, co-workers, citizens, or vendors, you should **immediately** report the conduct to your supervisor. If the conduct allegedly involves your supervisor, you should immediately report it to the elected County official under whom you serve. If the conduct allegedly involves the elected County official, you should immediately report the conduct to the County Judge. If the conduct allegedly involves the County Judge, you should immediately report the conduct to the County Grievance Committee. "Immediately" normally means the same day of the alleged harassment. The failure to make a timely report of alleged harassment may be a factor used in determining the merits of the allegation. Your complaint will be promptly investigated. All County employees are expected to cooperate fully in such investigations. To the extent feasible, all internal investigations and/or actions taken to resolve complaints of harassment will be confidential.

(3) Discrimination or retaliation against any County employee for making a complaint under this policy or for providing information during an investigation is strictly prohibited, will not be tolerated, and is a violation of this policy.

(4) Any County employee who violates this policy will be subject to appropriate discipline, up to and including termination. Any supervisor who knowingly permits harassment or retaliation to take place in his or her areas of supervision will be subject to appropriate discipline, up to and including termination.

E. Disabilities Policy. The County will provide reasonable accommodations to qualified individuals with disabilities, unless to do so would cause an undue hardship. An accommodation is a change in the work environment or in the way things are customarily done that is not unreasonable and that enables an individual with a disability to enjoy equal employment opportunity. Generally, an individual with a disability must inform his or her immediate supervisor that an accommodation is needed. When the disability and need for accommodation are not obvious, the County may require the individual to provide documentation from a medical provider concerning the disability and the need for a reasonable accommodation.

F. Genetic Information Nondiscrimination Policy. The County complies with the Genetic Information Nondiscrimination Act (GINA) and the Genetic Information in the Workplace

Act (GIWA). GINA and GIWA prohibit employers and other entities covered by these laws from requesting or requiring the disclosure of genetic information of an employee or family member of an employee, except as specifically allowed by these laws. To comply with these laws, employees should not, directly or indirectly, disclose any "Genetic Information" to the County at any time. "Genetic Information" includes an employee's family medical history, the results of an employee's or family member's genetic tests, the fact that an employee or an employee's family member sought or received genetic services, and genetic information of a fetus carried by an employee or an employee's family member or an embryo lawfully held by an employee or family member receiving assisted-reproductive services.

G. Immigration Reform and Control Acts. The County complies with the Immigration Reform and Control Acts of 1986 and 1990. Every newly-hired County employee shall complete an I-9 Form before commencing employment.

H. Political Activity. County employees are encouraged to participate in the election process, but assistance to candidates or issues must only be rendered on the employees' own time and County property must not be involved. County employees are not to endorse candidates or issues in their official capacities as County employees, or on behalf of the County or any County office. The legal provisions are summarized as follows: (1) County employees are prohibited from engaging in partisan political activity during the hours they are performing work for the County, excluding personal leave time; (2) political banners, posters, or literature should never be allowed or displayed in a County office; (3) political bumper stickers or decals should never be displayed on County property or any County-owned vehicle; County-owned vehicles must not be used during or after work hours to promote or assist the candidacy of any person or any ballot issue; (4) no County employee shall approach other County employees for any political purpose or use threats or coercion to require or persuade any employee to contribute to a particular candidate or cause. In the discretion of the County Judge or other elected County official who supervises a County employee, a County employee may be granted leave without pay for an extended absence to participate in a campaign.

I. Social Media Policy. Social media includes all means of communicating or posting information or content of any sort on the Internet. The same principles and guidelines applicable to County employee conduct also apply to County employees' activities online. Any conduct that adversely affects an employee's job performance, the performance of fellow employees, or otherwise adversely affects the interests of the County may result in disciplinary action up to and including termination. This policy applies to comments made under the employee's name or under a pseudonym used by the employee as a username. Harassment and cyber-bullying of any County employee will result in termination. Racist or sexist comments or comments that target the religious beliefs of others will result in termination. County employees should avoid posts, "likes," or other social media activity during work hours and on County-owned equipment, unless

authorized to do so by a supervisor or consistent with County policy. State law prohibits electioneering by public servants during work hours. Employees should consider any political activity to be electioneering—employees should follow the County's Political Activity Policy with all online posts.

J. Freedom of Information Act. The County complies with the Arkansas Freedom of Information Act (FOIA). Upon receiving a FOIA request, a County employee shall immediately notify his or her supervisor of the FOIA request. Any County official receiving notice of a FOIA request shall take steps to ensure timely compliance with the FOIA request.

K. County Property. The County's telephones, fax machines, photocopying equipment, computers, vehicles, and other property are to be used for business purposes only. County property is restricted to business use to assist County employees in the performance of their jobs. Occasional de minimus use of County property for personal, non-business purposes may be permitted—however, such personal use should not negatively affect the use of County property for business purposes or negatively affect employee performance. Any such use must be approved by your supervising County Elected Official. All business equipment, software, computer systems, electronic systems and all information stored, transmitted, received, initiated, or contained in the County information system are County property. The County reserves the right to monitor, copy, use, delete, publish, and log all network, Internet or local activity including email, software use, or other activity with or without notice—County employees should have no expectation of privacy when using these resources.

L. Technology Policy. I. The County's technology resources shall not be used to: 1) express a personal political opinion to an elected official unless the opinion is: (a) within the scope of the employee's regular job duties; or (b) requested by an elected official or public entity; 2) Engage in lobbying an elected official on a personal opinion if the employee is not a registered lobbyist for the public entity; 3) Engage in illegal activities or activities otherwise prohibited by federal law or state law; 4) Intentionally override or avoid the security and system integrity procedures of the public entity.

II. Each Elected Official shall create disciplinary procedures for a violation of this policy concerning authorized use of technology resources. The disciplinary procedures created pursuant to this section shall not apply to employee communications made in compliance with the Public Employees Political Freedom Act of 1999, Ark. Code Ann. §§ 21-1-501, et seq., or the Arkansas Whistle-Blower Act, Ark. Code Ann. §§ 21-1-601, et seq.

III. Technology resources is defined as: a) The machines, devices, and transmission facilities used in information processing, including computers, word processors, terminals, telephones, cables, software, and related products; b) The devices used to process information through electronic capture, collection, storage, manipulation, transmission, retrieval, and presentation of information in the form of data, text, voice, or image and includes telecommunications and office automation functions; c) Any component related to information

BOOK 2023
PAGE 98

processing and wired and wireless telecommunications, including data processing and telecommunications hardware, software, services, planning, personnel, facilities, and training; d) The procedures, equipment, and software that are designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and the associated personnel, including consultants and contractors; and e) All electronic mail accounts issued by a public entity.

4. **Hiring, Promotion and Demotion, Transfer, and Termination**

The County Employment Policies set forth in this County Personnel Policy (§ 3 above) apply equally to hiring, promotion and demotion, transfer, and termination.

A. Hiring. The County Quorum Court shall establish the number and compensation of all County employees. The job title, classification, and annual pay rate shall be specified for each position of a County department or County office in the annual budget. Positions cannot be advertised as vacancies, nor may persons be hired into positions, until positions are authorized by the Quorum Court. The County Judge shall hire all County employees except those employed by other County elected officials as permitted by Ark. Const. Amend. 55, section 3. Policies regarding hiring and firing adopted by the Quorum Court shall be only advisory upon County elected officials and employees hired by them as required by Ark. Const. Amend. 55. Employment policies of a general nature adopted by the Quorum Court shall be the decision of the County and binding as permitted by Ark. Const. Amend. 55, section 1 and Ark. Code Ann. § 14-14-805 (2).

AA. Rehiring and Transferring.

1. When an employee is hired into a county position from another governmental office or previous employment of similar training and background, the current or newly elected official shall have the right to hire them at a comparable rate of pay and benefits, that falls within the current county pay scale in their office/department.
2. Any county employee who terminates their employment with the county or is laid off by the county may be subsequently rehired before a one (1) year separation could begin employment at their former pay level and benefits at the discretion of the County Elected Official. After a one (1) year separation of employment with the county, the appropriate official would need Quorum Court approval for reinstatement of former pay and benefits consideration.

B. Reduction or Removal of Pay or Position. A County elected official may reduce or remove pay or position for any reason that is rationally related to the effectuation of any conceivable legitimate County objective. It is not possible to list all conceivable rational bases for reduction or removal of pay or position; however, examples include but are not limited to:

- (1) Misrepresentation, dishonesty, or self-dealing conduct;
- (2) Intemperate conduct;
- (3) Insubordination, including the failure or refusal to follow the legal orders of an elected County official or other supervisor;
- (4) Negligent, reckless, knowing, or intentional destruction of County property;
- (5) Abuse or misuse of your position as a County employee;
- (6) Any conduct, act, or omission that interferes with or impairs your ability to properly and effectively perform your duties as a County employee;
- (7) Any rational change in the mode or manner of operations, including any rational decision regarding the persons selected by an elected County official or supervisor for the delivery of County services.

C. Constitutionally-Protected Conduct.

(1) It is the policy of the County to comply with the Constitutions and laws of the State of Arkansas and the United States, and the public policy of the State of Arkansas. These laws include: (i) laws prohibiting unlawful discrimination based on race, color, national origin, sex or gender, religion, age, disability, veteran or military status, genetic information, or any other legally-protected status; (ii) laws prohibiting retaliation for exercising a constitutionally-protected liberty right (e.g., free speech, free association, political patronage, access to courts, privacy, etc.); and (iii) laws requiring that governmental action be rationally related to a conceivable legitimate government objective.

(2) Should any applicant, employee, or person requesting County assistance or services contend that he or she is the victim of unlawful discrimination, unlawful retaliation, or unlawful arbitrary government action, he or she shall request, in the time and manner set forth in this County Personnel Policy, a hearing before the County Grievance Committee to provide the elected official with notice of the alleged unlawful action, and the opportunity to voluntarily conform the conduct of the County, County officials, and County employees to the requirements of County policy (including conformity with the Constitutions and laws of the State of Arkansas and the United States, and the public policy of the State of Arkansas). Mediation by the County Judge (County Clerk if the grievance is against the County Judge) in consultation with the County Attorney will determine if a grievance hearing is approved.

D. Background Investigations. Background investigations may be performed on department heads, any position with access to County funds, and upper-level employees as determined by the hiring elected official. Background investigations may be conducted for other

positions at the discretion of the hiring elected official. All background investigations will be performed by a third party in compliance with the law.

E. Drug-Free and Alcohol-Free Workplace Policy. The County is committed to protecting the safety, health, and wellbeing of all employees and the public in our workplace. The County has established a drug-free workplace program that balances our respect for individuals with the need to maintain an alcohol-free and drug-free environment. The purpose of this policy is to assure worker fitness for duty and to protect the County's employees, passengers, and the public from the risk posed by misuse of alcohol and use of prohibited drugs. This policy is intended to comply with all applicable federal regulations governing workplace anti-drug and anti-alcohol programs.

(1) Testing. To ensure the accuracy and fairness of drug and alcohol testing, all testing will be conducted by a Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory, according to SAMHSA guidelines, in accordance with procedures required by the U.S. Department of Transportation where applicable, and in compliance with all applicable laws and regulations. Prohibited controlled substances are those defined by the Federal Controlled Substances Act and applicable Arkansas statutes governing controlled substances. An employee whose initial drug test result is positive and who requests a test of the split sample will be suspended without pay until the County receives the result of the split test. The split test will be paid by the County to be reimbursed to the County by the employee via withholding from the employee's paycheck. A negative result from the split test will render the first test invalid and the employee will be reinstated with back pay and reimbursement for the cost of the split test.

(2) Prescription Drugs, Over-the-Counter Drugs, and Medical Marijuana. Prescription drugs and over-the-counter drugs are not prohibited when taken in standard dosage and/or according to a physician's prescription—however, a safety-sensitive employee who has been prescribed a medication that might cause drowsiness or otherwise impair the employee's ability to safely perform job functions shall notify the employee's supervisor and provide a written statement from the prescribing practitioner certifying that such use will not impair the employee's ability to safely perform his or her essential job functions. When proper notification is made and a licensed medical practitioner's statement is provided, the employee may continue working in the same position. If a statement is not provided or if a provided statement does not certify that the employee's use of the prescription will not impair the employee's ability to safely perform job functions, a reasonable effort will be made to temporarily assign the employee to another position, if available. The illegal or unauthorized use of prescription drugs is prohibited. Medical marijuana usage under the Arkansas Medical Marijuana Amendment is subject to Act 593 of 2017, which restricts an employee in a safety-sensitive position from performing those duties if a positive test result occurs even if the employee is a qualifying patient under the Amendment and/or holds a registry identification card.

(3) Post-Offer / Pre-Employment Testing. County officials who hire for a position may elect to conduct post-offer / pre-employment testing on any prospective County employee. The prospective employee will not be employed until the test results are received by the office of the County Judge. The County Judge will then notify the County Clerk, who will

notify the elected County official or department head of the testing results. A prospective employee cannot start work until the post-offer / pre-employment test result is received.

(4) "Safety-Sensitive Positions" include, but are not limited to, positions involving a safety-sensitive function pursuant to regulations governing drug and alcohol testing adopted by the U.S. Department of Transportation and the Arkansas General Assembly. Safety-sensitive positions typically involve job duties where impairment may present a clear and present risk to co-workers or other persons. A safety-sensitive position includes any position where a momentary lapse in attention could result in injury or death to another person. A safety-sensitive position includes, but is not limited to, a position in which a drug or alcohol impairment constitutes an immediate and direct threat to public health or safety, such as a position that requires the employee to:

- (i) carry a firearm;
- (ii) perform life-threatening procedures;
- (iii) work with confidential information or criminal investigations;
- (iv) work with controlled substances;
- (v) maintain a commercial driver's license;
- (vi) drive a vehicle or operate heavy equipment as part of normal duties;
- (vii) serve as a mechanic on County vehicles;
- (viii) serve as a dispatcher for law enforcement or emergency services; or
- (ix) be prepared to use justified physical force against persons to maintain order or security for persons detained by the county.

(5) Testing of Safety-Sensitive Employees. Safety-sensitive employees are subject to testing to detect the presence of alcohol and controlled substances, including:

- (i) post-offer / pre-employment testing;
- (ii) random testing;
- (iii) reasonable-suspicion testing;
- (iv) post-accident testing; and
- (v) return-to-duty testing and follow-up testing.

(6) Random Testing of Safety-Sensitive Employees. Employees in safety-sensitive positions will be subject to random, unannounced testing. A computerized program shall determine the individual safety-sensitive employees to be randomly tested.

(7) Reasonable-Suspicion Testing of Safety-Sensitive Employees. A safety-sensitive employee who is reasonably suspected of being intoxicated, impaired, under the influence of alcohol or drugs, or not fit for duty, shall be suspended from job duties with pay pending an investigation and verification of condition. Only an elected County official or supervisor who has been trained in reasonable-suspicion testing requirements may initiate reasonable-suspicion testing.

(8) Post-Accident Testing. A County employee shall be suspended with pay pending an investigation and verification of condition, and screened for the presence of controlled

substances and alcohol, as soon as practicable, following his or her involvement in an accident involving a County vehicle or equipment, under the following situations:

- (i) an accident that results in the loss of human life;
- (ii) an accident that results in a moving violation citation;
- (iii) an accident that involves bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or,
- (iv) an accident that involves one or more vehicles incurring disabling damage as a result of the accident (requiring any vehicle to be transported away from the scene).

(9) Disciplinary Action. The following shall result in immediate discharge:

- (i) refusal to take a mandated test for drugs or alcohol;
- (ii) specimen given not within temperature range, unless the drug-tested employee agrees to give a second sample with a supervising witness of the same gender present to watch the collection;
- (iii) no sample is produced within three (3) hours of collection request unless a documented medical reason for such can be presented;
- (iv) a positive drug test (once the time limit for requesting a split test has expired, or upon receipt of a positive result from the split test); or
- (v) a positive alcohol test (breathalyzer or instant collection);
- (vi) leaving the testing area, for any reason, (to smoke, to take a phone call, etc.) before a specimen is collected;
- (vii) consuming more than 40 ounces of liquid before specimen collection;
- (viii) use of synthetic or proxy urine

(10) Records. All records regarding the County's Drug-Free and Alcohol-Free Workplace Policy shall be confidentially maintained, in a secure location with controlled access. Although records maintained by the County will remain confidential, such records may be used in legal proceedings in defense of the County, its agents, and employees, and such records may be otherwise disclosed as required or allowed by law.

F. Employee's Last Paycheck

Employee's Last Paycheck. An employee, whether voluntarily or involuntarily leaving their position with the county, may be issued a paycheck at the current minimum wage rate of pay with the remainder to be paid upon the return of all county owned property such as keys and uniforms, and verification of passwords. Password verification by the County Elected Official should occur within seven (7) days of employee's termination.

5. Employee Classification, Attendance, and Compensation

A. Employee Classifications. The County's office hours for normal business are 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding holidays. A full-time County employee is an employee who occupies a full-time position with the County and who works a full-year schedule for the County. Full-time County employees are expected to work during County office hours, with an unpaid lunch break each day and two paid breaks each day of up to 15 minutes per paid break. Paid breaks may not be taken at the beginning or end of the work day, nor at the beginning or end of the unpaid lunch break.

A part-time County employee is an employee who works less than a full year schedule for the County. A regular part-time employee is hired to work less than a full work week on a non-seasonal basis, and will be permitted to work no more than 31 hours per work week. Regular part-time and seasonal part-time employees are not eligible for benefits (other than those required under state and federal law) that are afforded to regular full-time employees. Regular part-time employees are eligible for bereavement pay and may be issued disbursements from the catastrophic leave bank.

B. Employee Compensation. County employees are paid on a biweekly basis (pay period every two weeks; usually 26 pay periods annually). Each pay period covers the two weeks prior to the week of payment. After termination of employment, a County employee will be paid through the employee's final working day in the payment for the pay period following termination of employment. Annual raises are not guaranteed, and annual budgets must be approved by the Quorum Court.

C. Employee Attendance. County employees are expected to be on the job during their regular work hours. Van Buren County Employees should work at the office or the job site and should never be allowed to work from home. Unexcused and excessive tardiness and/or absenteeism may result in disciplinary action, up to and including termination. County employees will be permitted absence without prior authorization under only the following conditions: (1) emergency, (2) family sickness or funeral, (3) County business, (4) inclement weather conditions where the employee is unable to travel safely; (5) other, if subsequently approved by the employee's supervisor. Excused absences with prior or contemporaneous authorization are governed by the leave policies set forth separately below.

D. Overtime Work and Compensatory Time. The County complies with the Fair Labor Standards Act (FLSA).

(1) Any County employee who makes less than the minimum pay amount set by the FLSA is, regardless of job duties, eligible for overtime compensation.

(2) Otherwise, only County employees defined by the FLSA as "non-exempt"—which means not employed in a bona fide "executive, administrative, or professional capacity"—are eligible for overtime compensation.

BOOK 2023
PAGE 72

(3) The fact that an employee is paid a "salary" has nothing to do with whether an employee is (or is not) eligible for overtime compensation.

(4) As authorized by the FLSA, the County's employees who are eligible for overtime compensation shall receive, in lieu of overtime pay, compensatory time off at the rate of one and one-half hours of compensatory time for each hour of overtime worked.

(5) The normal work period shall be 40 hours per week for all County employees.

(6) Overtime should only be worked in emergencies or when public health, welfare, and the safety of the community is in danger, or when expressly approved by signature on the employee's time sheet by the County Elected Official. This includes checking emails and/or phone messages outside business hours—non-exempt employees shall not check emails and/or phone messages, or otherwise work outside of business hours without approval. Overtime worked shall be compensated as set forth in this policy whether approved in advance or not, but employees who work overtime without approval as set forth in this policy are subject to discipline up to and including termination.

(7) Employees should strive to keep less than 120 hours of compensatory time. After an employee accrues the 120 hours of compensatory time, the employee should present a plan of action to their supervisor stating how the time will be used to reduce the overall amount down below the 120 hour amount before the end of the year. Compensatory time shall convey in cash at a rate of one and one-half times the employee's normal hourly rate, for each hour of overtime worked (subject to normal withholdings for taxes, etc.). Payments for accrued compensatory time may be made at any time both the budget and the County Elected Official allow, and shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

(8) Upon termination of employment, an employee who has accrued compensatory time shall be paid for the unused compensatory time at the employee's average hourly rate during the last three years of employment, or the employee's final hourly rate, whichever is higher. If an employee is transferring departments within the county, all of their accrued time should transfer with them to their new department. Questions of leave amounts being transferred should be worked out with both the sending and receiving County Elected Officials and agreed upon prior to the transfer being completed.

(9) An employee who has accrued compensatory time off and who has requested the use of compensatory time off shall be permitted to use such time within a reasonable period after making the request if the use of compensatory time does not unduly disrupt the operation of the County or employing department.

(10) All County elected officials and department heads will maintain time sheets to be filled out by each non-exempt employee on a weekly basis. All time sheets shall be signed under oath by the non-exempt employee and signed by the elected official or department head. Time sheets shall be provided to the County Clerk's Office at the end of each payroll period to be

kept as permanent records. If an elected County official or department head fails to provide the required and approved time sheets to the County Clerk, the County Clerk shall not issue subsequent paychecks.

(11) Paid leave days should not count toward time worked in a work period for calculating overtime. Only time worked by an employee shall count toward calculating overtime (including time worked on a holiday). Emergency situations may exist in which the County Elected Official may offer compensatory time without regard to any other paid leave day(s) (holiday, sick, PTO, inclement weather pay, etc.) in the same pay period.

(12) A person who accepts employment with the County or continues in employment with the County shall be deemed to have agreed to receive compensatory time off in lieu of overtime compensation as set forth in this policy.

(13) Compensation to the employee shall only be paid for time spent actually working on the job. In the event of a shortage of time in a pay period, for any excusable reason, the employee may elect to be paid from any applicable pool of accrued time. (PTO, sick, vacation, etc.)

E. Overtime and Leave Time Liability Control Procedure

(1) Employees Required to Personally Sign and Certify Timesheets. Each non-exempt County employee shall *personally* sign his or her time sheet, certifying: "My signature certifies that the above recorded hours worked and leave taken are correct and true."

(2) County Clerk to Keep Employee Time Sheets as a Permanent Record. The signed/certified employee time sheets shall be timely provided to the County Clerk's Office at the end of each pay period to be kept as a permanent record (for at least five years).

(3) County Clerk to Calculate Payroll from Non-Exempt Employee Time Sheets. The County Clerk will calculate payroll for non-exempt employees, including overtime pay, vacation leave pay, sick leave pay, and holiday pay, based on the signed/certified time sheets and in reliance upon the employees' signed certification that the hours worked and the leave time taken are correct.

(4) County Clerk Not to Issue Check without Signed/Certified Timesheet. The County Clerk shall not issue a paycheck to a non-exempt employee if the required employee time sheet(s) is/are not signed and certified by the employee (personally) or are not timely provided to the County Clerk.

(5) Log Book of County's Total Overtime Liability. The County Clerk shall keep a record in a separate log book of accumulated compensatory time, sick leave time, and vacation leave time, showing all such time earned and all such leave time taken by the employees who have earned such leave time.

(6) Report Total County Overtime Liability Monthly. The County Clerk shall provide a monthly report to the County Treasurer, the County Judge, and the Quorum Court, reporting the amount of the County's accrued compensatory time debt.

(7) Cash payments of overtime (compensatory time) must be approved the supervising County Elected Official and should only be paid as the budget allows.

(8) Quorum Court to Manage the County's Compensatory Time Debt from Month to Month. The Quorum Court shall use its appropriation power (including re-appropriation power) to modify the County's budget throughout the year so that the County has the funds to pay the compensatory time debt that has accumulated throughout the year at the end of the year. The Quorum Court may only adjust the annual operating budget as funding allows.

F. No County Gifts. The Arkansas Constitution prohibits the County from using public money to confer a private benefit. Ark. Const. Art. 12, § 5. County elected officials, department heads, and supervisors shall comply with this constitutional provision and shall not offer or award more paid leave time (holiday, vacation, sick, or compensatory) than authorized by this County Personnel Policy.

G. Catastrophic Leave

A. Participation

Participation in the Catastrophic Leave Bank is available to all employees who meet the eligibility requirements. These requirements include the following:

1. The employee must be a full time or part time employee. Temporary employees and contract labor shall not participate.
2. The employee must have been continuously employed by Van Buren County for a minimum of six months.
3. The donation of hours should never exceed that of the employee's regular work week.

B. Committee and Overseers

1. The Catastrophic Leave Bank Committee will consist of the County Judge (Committee Chair), County Clerk, Circuit Clerk, Sheriff, Collector, Treasurer, and Assessor.
2. The committee should render a decision on all applications within ten (10) working days after receiving the request.
3. The decision must reflect a majority of the entire committee, that is at least four (4) votes.
4. A group of no less than five (5) committee members should be present to conduct the official business of the Catastrophic Leave Committee.
5. The committee members should consider the following criteria in administering the Catastrophic Leave donation and in rendering a decision:

- A. Medical evidence of serious illness
 - B. The employee must have already used all accumulated leave time
 - C. History of use of leave
 - D. Any other pertinent consideration to each specific request
6. The County Clerk's Office shall keep record of all time donated and all time dispersed.
7. The committee in no way obligates itself or assumes responsibility should the Catastrophic Leave Bank find itself inadequate to respond to the needs of the County Employees.
8. In instances where the requesting employee is employed by the department of one of the voting officials, that member should abstain from voting on that request.
- C. Procedures for Application for Catastrophic Leave Donation Withdrawals
- 1. All full time and part time employees shall be eligible to make application to the Catastrophic Leave Bank provided that:
 - a. He/she has been absent from work due to catastrophic illness or has known time off coming in the immediate future, including but not limited to injury, emergency surgery, or temporary disability for at least five (5) consecutive workdays. Catastrophic Leave shall be paid only after all other paid leave time has been exhausted. Elective surgery and/or pregnancy without complications should be considered for dispersal.
 - b. In the event that an employee is unable to make a request to the Catastrophic Leave Committee, a family member or agent may file the request on the employee's behalf.
 - c. The Catastrophic Leave donation withdrawal form shall be accompanied by a physician's statement verifying illness and attesting to the individual's incapacity to perform assigned duties.
 - d. An applicant may be required to undergo at his/her own expense a medical review by a physician approved by the Committee.
 - e. Leave days must be for personal illness, temporary disability and/or the illness/death of an immediate family member.
 - f. Leave grants from the Catastrophic Leave donation should be in units of up to ten (10) consecutive workdays.
 - g. Applicants may submit requests for extensions of leave before their prior grant expires.

h. The maximum number of donated days any member may receive in any twelve (12) month period is sixty (60) days for full time, (30) days for part-time.

i. All donated leave granted but not used by the employee must be returned to the Catastrophic Leave Fund according to time given.

j. ANY fraudulent or misinformation will automatically render application to the Catastrophic Leave Bank null and void and should result in termination.

k. Catastrophic Leave Bank days will not be granted if an applicant is eligible for or receiving income from an income protection insurance policy or similar coverage. Employees receiving Workers Compensation benefits will also be ineligible to receive a withdrawal.

D. Procedures for Application to the Catastrophic Leave Bank due to Immediate Family Illness

- Procedures will be the same as listed for personal use.

H. Donated Leave Time

- A. An employee with six (6) months continuous service (the donor employee) shall be eligible to donate any portion of their accumulated leave to an employee who has used all their paid leave (the donee employee) or is part-time and has no accumulation of leave.
- B. If the donee employee does not use all of the donated leave, the unused portion reverts back to the donor employee.
- C. The County Clerk shall be responsible for monitoring such donations. All donor employees must fill out a form available from the County Clerk's Office to donate their leave and each form shall be file marked to determine the order of donation, use, and reversion.
- D. Donation must be approved by the County Elected Official of both the donor and donee.

I. Bereavement Leave

- A. The employee must be a full-time or part-time employee of the county.
- B. The employee must be beyond their probationary period as described in the County Personnel Policy.
- C. Employees are entitled to three (3) days (regular schedule) of bereavement pay upon verification the employee meets all other bereavement requirements.

- D. Bereavement pay may be issued for the death of the employee's immediate family member. (Child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, domestic partner)
- E. In the event that someone particularly special to an employee passes away, the County Elected Official may approve bereavement in those special circumstances. (Foster-parent, cousin who raised the employee, etc.)
- F. Serving as a pall-bearer, singing at a funeral, or other service-related activities, shall be paid from the employee's accumulated leave but should not count as an absence. The employee, under such circumstances, is expected to return to work as soon as feasibly possible as an entire day may not be required to perform service activities.
- G. Under no circumstance shall the death of a pet qualify for bereavement pay.

6. Administrative Leave and other Benefits

- A. Group Insurance Programs: The County offers group insurance programs for full-time County employees who have been employed for sixty (60) days and working at least thirty-one (31) hours per week. The County pays portions of some but not all premiums for group insurance programs. All insurance benefits are subject to change at any time. This Personnel Policy does not guarantee continuation of any group insurance benefits.
 - a. Employees who do not participate in the county's fully paid insurance programs may be eligible for a cash payment at year's end for 75% of the premium amount. The following are examples of such:
 - i. An employee is insured by their spouse's insurance plan (proof required)
 - ii. An employee and their qualified spouse are both employed by the county. They may use a family plan and receive 75% of the difference between the two individual plans and the one family plan.
 - iii. An employee who qualifies for and chooses Medicare may receive 75% of the difference between the Medicare plan and the county provided plan. (proof of Medicare enrollment required)
 - iv. An employee finds over-the-counter insurance from another provider and provides proof of coverage by another provider.
 - v. This is not intended to be an exhaustive list of examples. The supervising County Elected Official shall be responsible for approving any reason not expressly covered in this section of the policy.
 - b. Employees whose employment terminated during the year will be paid on a weekly pro-rated basis but only if a payment is requested in writing by the terminated employee.
- B. Holiday Leave. The County will be closed and all full-time County employees

will be granted paid leave to observe the legal holidays listed below. Additional holidays may be proclaimed by the County Judge. Solid Waste, Sheriff's Department, and Jail Staff employees must abide by department specific policy as established by the County Elected Officials. For holiday purposes, the week begins on Sunday and ends on Saturday. Holidays occurring at the end of the week will be celebrated before the holiday. Holidays at the beginning of the week will be celebrated immediately following the Holiday. For example, if July 4 falls on Saturday, the county will observe the holiday on July 3. If July 4 should fall on a Sunday, the county will observe the following Monday.

- (1) New Year's Day—January 1
- (2) Martin Luther King Birthday—January 19
- (3) Presidents Day—3rd Monday in February
- (4) Good Friday – Friday before Easter
- (5) Memorial Day—Last Monday in May
- (6) Independence Day—July 4
- (7) Labor Day—1st Monday in September
- (8) Veterans Day—November 11
- (9) Thanksgiving Day—4th Thursday in November
- (10) Black Friday – The Friday after Thanksgiving
- (11) Christmas Eve—December 24
- (12) Christmas Day—December 25
- (13) The Employee's Birthday (May be used on or after their birthday, all employees qualify for a birthday holiday)
- (14) New Year's Eve – December 31 County Offices will close at noon.

C. Vacation Leave. A "year" for vacation leave is from hire date to hire date. Vacation leave is a benefit like salary that each full-time County employee earns that works at least 32 hours per week, and that accrues to all eligible employees in accordance with the schedule set out in this section. Vacation leave shall be granted by the employee's appropriate supervisor in advance of the leave and at such time, or times, as will least interfere with the efficient operation of the County. Vacation leave may be taken in increments as low as .25 hours (15 minutes). No vacation leave may be taken unless earned—employees are not permitted to borrow against leave days to be accrued in the future. Any vacation leave remaining at the end of a year will be automatically donated to the Catastrophic Leave Bank Program for the office of the elected County official in which the employee works. Employees will be paid for accrued but unused vacation leave following termination of employment. Vacation leave shall accrue as follows:

Service Time Minimum	Accrued Vacation Leave
1 year	40 hours (1 week)
2 to 5 years	80 hours (2 weeks)
6-14 years	120 hours (3 weeks)

Time should be awarded on the employee's anniversary of their hire date.

D. Paid Leave

1. Sick Leave. Sick leave accrues to all eligible employees (accrual begins after a six month probationary period) at the rate of four (4) hours per biweekly pay period. Sick leave begins to accrue with the enrollment date of the full-time employee. Sick leave shall be granted by the employee's appropriate supervisor in advance of the leave whenever possible and at such time, or times, as will least interfere with the efficient operation of the County. Sick leave shall be deducted from the employee's accrued sick leave based on the number of accrued sick leave hours requested and granted. Sick leave may be taken in increments as low as .25 hours (15 minutes). No sick leave may be taken unless earned—employees are not permitted to borrow against leave days to be accrued in the future. Accrued sick leave may not exceed **480 hours**. Any sick leave above **480 hours** at the end of a year will be automatically donated to the Catastrophic Leave Bank Program. Employees are not entitled to be paid for any accrued but unused sick leave. A doctor's note shall be required after 72 consecutive hours of absence from the job.

2. Personal Days (Paid Time Off (PTO))

County employees become eligible for PTO after six (6) months of continuous full time employment and shall be granted at the rate of two (2) hours per pay period. PTO hours shall not be paid should employment be terminated. PTO shall be time only and shall never be subject to a cash payout. Unused PTO over sixteen (16) hours at the end of the year shall be deposited into the Catastrophic Leave Fund.

E. FMLA Leave. The County complies with the Family and Medical Leave Act (FMLA). The eligibility criteria and general guidelines used in administering this policy are set forth below. Interpretation of circumstances not specifically covered in this policy will be made in accordance with applicable law. The FMLA was designed to promote our country's interest in preserving family unity while accommodating the legitimate interests of employers. The FMLA seeks to minimize the potential for employment discrimination on the basis of gender consistent with the Equal Protection Clause of the Fourteenth Amendment by assuring that leave is available for both women and men.

(1) Employee Eligibility Criteria. To be eligible for FMLA leave, employees must have been employed by the County at least 12 months, whether consecutive or intermittent, and worked at least 1,250 hours during the twelve 12-month period. All absence from work for covered military service is counted in determining an employee's eligibility for FMLA leave. The County will grant up to 12 weeks of unpaid FMLA leave per year to eligible employees.

(2) Qualifying Events for FMLA Leave. FMLA leave may be taken for any one, or a combination of, the following reasons:

- Care of the employee's child (birth or placement for adoption or foster care);
- Care of the employee's spouse, dependent child, or parent with a serious health condition;

- Serious health condition that makes the employee unable to perform the essential functions of his/her job;
- A “qualifying exigency” resulting from the covered active duty or the call or order to covered active duty of the employee’s spouse, son, daughter, or parent who is a military member of the National Guard and Reserves or the Regular Armed Forces; and,
- Care of the employee’s spouse, son, daughter, parent, or next of kin, who is a covered service member with a serious illness or injury incurred or aggravated by service in the line of duty. (Employees eligible for this type of leave may be eligible for up to 26 workweeks of leave, rather than the usual 12.)

(3) “Serious Health Condition.” A “serious health condition” is an illness, injury, impairment, or physical or mental condition that requires inpatient care at a medical facility, including any period of incapacity, or any subsequent treatment regarding such inpatient care, or a condition that requires continuing care by a licensed health care provider. This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

(4) Pay Status During FMLA Leave. FMLA leave is unpaid leave. However, any available paid time off, including qualifying workers’ compensation leave, sick/vacation or comp time, will run concurrently with FMLA leave, until such leave is exhausted. Once an employee’s paid benefits are exhausted, he/she will be in an unpaid status during the remainder of his/her FMLA leave.

(5) How Much FMLA Leave May be Taken. An eligible employee taking FMLA leave is entitled to up to 12 workweeks of unpaid leave during a 12-month period for any FMLA qualifying event(s) as listed above. The 12-month period is a rolling 12-month period measured backward from the date an employee uses any FMLA leave. Leave to care for a seriously injured or ill active-duty military member, when combined with other FMLA-qualifying leave, may not exceed 26 weeks in a single 12-month period. When both spouses are employed by the County, they are together entitled to a combined total of 12 workweeks of FMLA leave within the designated 12-month period for the birth, adoption, or foster care placement of a child with the employees, and to care for a parent (but not in-law) with a serious health condition. Each spouse may be entitled to additional FMLA leave for other FMLA qualifying reasons.

(6) Intermittent or Reduced Work Schedule Leave. FMLA leave may be taken intermittently or on a reduced work schedule when medically necessary due to the employee’s or family member’s illness. Leave to care for a newborn or for a newly placed child may not be taken intermittently or on a reduced work schedule. If an employee takes leave intermittently on a reduced work schedule basis, the employee must, when requested, attempt to schedule the leave so as not to unduly disrupt County operations. When an employee takes intermittent or reduced work schedule leave for foreseeable planned medical treatment, the County may temporarily

transfer the employee to an alternate position with equivalent pay and benefits for which the employee is qualified and which better accommodates recurring periods of leave.

(7) Notice. An employee should request FMLA leave by completing required paperwork and submitting it to the employee's supervisor as soon as practicable. When leave is foreseeable, the employee must provide the County with at least 30 days' notice.

(8) Medical Certification. An eligible employee is required to submit medical certification from a health care provider to support a request for FMLA leave for the employee's or a family member's serious health condition. The County may have a designated individual contact the employee's health care provider to clarify or authenticate the initial certification with notice to the employee; and/or require the employee to obtain a second opinion by an independent County-designated provider at the County's expense. If the initial and second certifications differ, the County may, at the County's expense, require the employee to obtain a third, final and binding certification from a jointly selected health care provider. During FMLA leave, the County may request that the employee provide recertification of a serious health condition at intervals in accordance with the FMLA. The employee must provide the County with periodic reports regarding the employee's status and intent to return to work when requested. If the employee gives the County notice of his/her intent not to return to work, the employee will be considered to have voluntarily resigned. Before the employee returns to work from FMLA leave for the employee's own serious health condition, the employee may be required to submit a fitness for duty certification from the employee's health care provider, with respect to the condition for which the leave was taken, stating that the employee is able to resume work. FMLA leave or return to work may be delayed or denied if the appropriate documentation is not provided in a timely manner. Failure to provide requested documentation may lead to termination of employment.

(9) Designation of FMLA Leave. The County will notify the employee whether leave has been designated as FMLA leave and how much leave will be counted against the employee's leave entitlement. The County may provisionally designate the employee's leave as FMLA leave if the County has not received medical certification or has not otherwise been able to confirm that the employee's leave qualifies as FMLA leave. If the employee has not notified the County of the reason for the leave, and the employee desires that leave be counted as FMLA leave, the employee must notify the County within two business days of the employee's return to work that the leave was for an FMLA reason.

(10) Continuation of Benefits. During FMLA leave, the County will continue an employee's group insurance coverage under the same conditions as if the employee were working. An employee on FMLA leave will continue to be responsible for his/her portion(s) of group insurance premiums. FMLA leave is not a "qualifying" event under COBRA. If the employee does not return to work, the employee may be liable to the County for repayment of insurance premiums paid by the County during the employee's FMLA leave.

(11) Return from FMLA Leave. Upon return from FMLA leave, the County will place the employee in the same or equivalent position with equivalent pay, benefits, and other terms and conditions of employment. An employee is entitled to reinstatement only if he/she would have continued to be employed had FMLA leave not been taken. Thus, an employee is not

entitled to reinstatement if, because of layoff, reduction in force, or other reasons, the employee would not be employed at the time job restoration is sought. The County reserves the right to deny reinstatement to exempt, eligible employees who are among the highest paid ten percent of the County's employees ("key employees") if such denial is necessary to prevent substantial and grievous economic injury to the County's operations. An employee returning to work must be able to perform the essential functions, with or without reasonable accommodations, of the position the employee held before the leave or an equivalent position with equivalent pay, benefits, and other employment terms. The County may require a fitness for duty report before allowing an employee to return to work.

(12) FMLA Rights and Obligations. The County will not: (1) interfere with, restrain, or deny the exercise of any right provided under the FMLA; or (2) discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA. The FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law providing greater family or medical leave rights.

F. Leave Without Pay. Leave without pay may be granted at the discretion of an employee's supervising elected official or department head. An employee on leave-without-pay retains all earned vacation leave and sick leave, but does not accumulate leave time, does not participate in County group insurance programs (at County expense), and does not receive pay for legal holidays or otherwise. An employee on leave-without-pay shall have the right to reinstatement to the position vacated or an equivalent position upon the conclusion of the approved leave-without-pay period. An employee on leave-without-pay may pay the total cost of any County group insurance program during such leave and be fully reinstated into such program(s) on return, where the program allows this.

G. Military Leave. The County complies with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), which protects applicants and employees who serve in the military from discrimination in the areas of hiring, job retention, and advancement. USERRA provides job and benefit protection for employees who serve in the military, and it provides certain reemployment rights to any employee who has been absent from work due to service in the United States uniformed services. The County will grant a military leave of absence to any employee who is required to miss work because of service in the United States uniformed services in accordance with USERRA. You must notify the County if you receive notice that you will require a military leave of absence unless providing such notice is precluded by military necessity, impossible, or unreasonable. You should provide the County with a copy of your official orders. When you receive notice that you will need a military leave of absence, please contact your supervisor for further information regarding your rights and responsibilities under USERRA.

H. Jury Duty Leave. A County employee called to serve on a jury must notify his/her supervisor immediately upon notice so that his/her work schedule can be modified to accommodate jury duty. A full-time County employee serving as a juror in state or federal court shall be entitled to leave with pay, and such

service or necessary appearances in court shall not be counted as vacation leave or sick leave. This section shall not apply when the employee is personally involved in the lawsuit or litigation.

I. Other Premium Pay. Conditions may exist where the County Elected Official of a department **may choose to allow** Premium Pay for all or part of your shift. Examples of times when Other Premium Pay may be used include:

- a. Actual worked hours during inclement weather when county offices have been closed by the County Judge.
- b. Unusual night or weekend hours worked. (Unusual meaning not normally scheduled.)
- c. These are examples and are by no means an exhaustive list of permissible reasons to provide Other Premium Pay.
- d. **Premium pay must be authorized by the Elected Official and accounted for with a separate county-approved form.**

Other Premium Pay shall be paid at a rate of one-half hour of premium time per actual hour worked. Other Premium Pay shall apply only to the first forty (40) hours the employee actually works.

J. Inclement Weather Leave Time and Other Emergency Leave Time. Conditions may exist to allow the County Judge to close the county offices, such as when road conditions make travel to work unsafe. The type of emergencies which may exist include, but are by no means limited to: ice/snow, power failure, flooding, structural damage to a facility, etc. The following rules apply to Emergency Leave Time:

- a. The County Judge must publicly announce the closure.
- b. Even in the event of a closure, your County Elected Official may still require you to report to work for any reason.
- c. Jail, Sheriff, Road, Solid Waste, and Maintenance employees are required to report to work unless otherwise directed by the County Elected Official.
- d. Employees shall be paid for their normally scheduled worktime when a closure is announced.
- e. The policy of Other Premium Pay may be utilized by the County Elected Official during any closure.
- f. It is the responsibility of the employee to communicate with their County Elected Official to verify whether you should report to work when a closure is announced.

7. **Informal Procedure for Reporting/Resolving Perceived Harassment and other Job-Related Complaints**

A. Purpose. The purpose of this section is to provide a procedure for reporting any conduct or condition perceived to be discrimination, harassment, retaliation, violation of state or

federal law, or other job-related complaints and to enable the County to act affirmatively, if needed, to assure compliance with the law.

B. Affirmative Duty to Report. If a County applicant or employee considers the conduct of a County official, agent, or employee, or a workplace condition, to constitute prohibited discrimination, harassment, or retaliation, or a violation of state or federal law, the applicant or employee has a duty to report it immediately to the applicant or employee's supervisor, supervising elected official, or the County Judge. If the conduct or condition allegedly involves the employee's supervisor, supervising elected official, and/or the County Judge, the employee shall report the conduct or condition to the County Grievance Committee.

C. Affirmative Duty to Act. Any County supervisor, elected official, or the County Judge receiving any report of discrimination, harassment, retaliation, or violation of state or federal law has a duty to take appropriate action, if and as required by law, and/or report the matter to either the supervising elected official, the County Judge, or the County Grievance Committee so that appropriate action can be taken and the person originating the report can be informed of the action taken.

D. Continuing Duty to Report. If the person reporting the alleged discrimination, harassment, retaliation, or violation of state or federal law is not satisfied with the action taken or if the alleged discrimination, harassment, retaliation, or violation of law continues, the reporting person shall then file a grievance as laid out in Section 8 below.

E. Confidentiality. Except to the extent necessary to implement this policy and remedy the alleged discrimination, harassment, retaliation, or violation of law, the identification of the person reporting the conduct or condition shall remain confidential.

F. No Adverse Employment Action. **The County shall not take adverse action against a person for reporting conditions or conduct reasonably believed to be prohibited discrimination, harassment, or retaliation, in violation of the law or the state or federal Constitution, or in violation of state public policy.**

8. Grievance Hearing Procedure

A. Purpose.

(1) If an applicant or employee does not follow this affirmatively required Grievance Hearing Procedure, the County will raise waiver and estoppel as affirmative defenses to any claims against the County filed by the applicant or employee via any administrative or judicial procedures otherwise available for redress of grievances.

(2) Any decision of the Grievance Committee shall be advisory to the relevant elected official, but not binding on the elected official.

B. County Grievance Committee.

BOOK 2023
PAGE 85

(1) The County Quorum Court may appoint the membership of the County Grievance Committee as a standing Personnel Committee—such appointment of the Grievance Committee membership must be done by ordinance, and members of the Grievance Committee must be designated by position (not by name). If the Quorum Court has not appointed a Grievance Committee, then the Grievance Committee shall be the Quorum Court. The persons to serve for any hearing will be the persons holding the committee position at the time the discipline or dismissal decision was made for which a hearing is requested.

(2) If the Grievance Committee determines that an executive decision or action of a County official violates the law or the Constitution, the Grievance Committee shall declare the decision or action to be illegal or unconstitutional and direct the County official (or advise the County Judge) to modify the decision or action to conform to the law, the state or federal Constitution, or state public policy.

(3) The Grievance Committee shall not substitute its operational judgment for that of a County elected official.

C. Timely Grievance Hearing Request Required. A grieving applicant or employee must submit a written grievance hearing request after any claimed deprivation of the applicant or employee's property, liberty, or statutory/constitutional rights. A written grievance hearing request must be delivered to the County Grievance Committee in care of the County Judge no later than the close of business on the third full business day (weekends and holidays excluded) after any claimed deprivation for which a hearing is requested. The written grievance hearing request must state: (1) the grievance for which a hearing is requested; (2) the alleged factual basis of the grievance; and (3) the relief sought. If an applicant or employee fails to submit a timely hearing request as required under this section, the County will raise waiver and estoppel as affirmative defenses to any claims against the County filed by the applicant or employee via any administrative or judicial procedures otherwise available for redress of grievances.

D. Back Pay Provisions when an Employment Decision is Reversed. If an employee is rehired, reinstated, or any employment decision is reversed after the grievance hearing, the County shall pay the wages the employee would have earned, but did not due to the unconstitutional or illegal actions taken, from the date of termination, demotion, or unpaid leave through the date of the reversal.

E. Written Response to Hearing Request Required. The County Grievance Committee shall provide a written response to all timely grievance hearing requests. If the hearing request is granted, the Committee's response shall state the date, time, and location of the hearing. If the hearing request is denied, the Committee's response shall state the reason(s) for the denial.

F. Mediator Role of County Judge. Upon receiving notice of a request for a hearing before the County Grievance Committee, the County Judge may choose to conduct an

informal review of the dispute to mediate a solution acceptable to both the grieving applicant or employee and the supervising County official(s). The mediation will be concluded by the County Judge (or County Clerk if the grievance is filed against the County Judge) with consultation of the County Attorney before the hearing before the County Grievance Committee is scheduled. The mediation may be conducted in any manner the Mediator believes will offer the best opportunity for resolving the dispute informally and by agreement. **Requests for a grievance hearing may be denied to the employee under the following circumstances:**

- i. The claim does not involve unlawful or unconstitutional action by the County Elected Official or direct supervisor.
- ii. There is no proof to the claim.
- iii. It is found that the grieving employee broke the County Personnel Policy or that the offense is one clearly addressed at terminable in the Policy Manual.
- iv. If the County Elected Official consulted the attorneys at the Association of Arkansas Counties or the County Attorney, and they agreed prior to the action being taken by the employer that the action was/is valid.

G. Hearing Procedure.

(1) The hearing shall be held in public if required by law (such as under the FOIA). The employee may, at any time, decline or end the hearing and accept the intended discipline or termination.

(2) The hearing shall be transcribed by a court reporter (not merely a tape recorder) upon request by the grieving employee or the employee's supervising elected official at the expense of the requesting party. At the hearing, on the record, the parties shall suggest any desired hearing procedures and state any complaints regarding: (i) the notice; (ii) the date, time, or location of the hearing; (iii) the opportunity to refute charges; and (iv) the impartiality of any decisionmaker(s).

(3) Informal rules of procedure and evidence shall be followed at hearings: (i) witnesses shall testify under oath; (ii) parties shall be allowed to be represented by legal counsel at their own expense; (iii) parties shall be allowed to examine and cross-examine witnesses; (iv) parties should be granted a reasonable continuance if requested prior to the hearing in writing and if reasonably necessary for stated reasons to prepare adequately for the hearing.

(4) The Grievance Committee will hear the evidence and argument offered by the parties and vote without public discussion or deliberation. Only the Grievance Committee's decision, expressed as a single word agreement or disagreement with the elected official's underlying employment action, but not the factual or legal reasoning, shall be announced publicly. No notes should be taken by members of the Committee.

(5) Public access to applicant or employee grievance records is authorized only if approved by the applicant or employee or authorized by the Arkansas FOIA.

(6) Grievance Hearings shall not be video recorded. Audio recordings will be produced for FOIA purposes only.

(7) All witnesses must appear in person. No witnesses shall testify by telephone, Skype, Facetime, or any other means other than in person.

(8) Grievance Hearings shall be conducted in the manner prescribed by Mike Rainwater, Attorney, and made available through the Association of Arkansas Counties.

(9) The only parties that should be asked to leave the room are predetermined witnesses. Both the County Elected Official and the grieving employee shall be allowed to be present at all times.

9. **Grievance Hearing Issues and Burdens of Proof**

A. Property Interest Hearing—Claim of Property Interest in Employment. The grieving employee has the burden of proving by a preponderance of the evidence that he or she has a legitimate claim of entitlement to his or her employment—despite the County’s at-will employment policy—and not a mere subjective or unilateral expectancy of continued employment. If the employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of the evidence that there is just cause for the intended discipline or dismissal.

B. Liberty Interest Hearing—Claim of Unconstitutional Retaliation. The grieving applicant or employee has the burden of proving by a preponderance of the evidence that he or she has engaged in constitutionally-protected conduct that was a substantial or motivating factor in an adverse employment decision, discipline, or dismissal. If the applicant or employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of the evidence that the adverse employment decision, discipline, or dismissal would have occurred in the absence of the constitutionally-protected conduct.

C. Liberty Interest Hearing—Claim of Disability Discrimination. The grieving applicant or employee has the burden of proving by a preponderance of the evidence that he or she is a qualified individual with a disability who, because of the disability, has been treated or affected differently than another person regarding job application, procedures, advancement, dismissal, compensation, training, or other terms, conditions, or privileges of employment. If the applicant or employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of the evidence that the difference in treatment or effect is job-related and necessary to effectuate a legitimate County objective, that performance of the job cannot be accomplished by reasonable accommodation, or that the needed accommodation would cause the County undue hardship.

The following definitions apply to claims of disability discrimination:

(1) "Disabled" or "disability": A physical or mental impairment that substantially limits one or more major life activities of an individual; having a record of such impairment; or being regarded as having such an impairment. Being "regarded as having such an impairment" may include individuals with conditions such as obesity or cosmetic disfigurement and individuals perceived to be at high risk of incurring a work-related injury.

(2) "Discrimination" includes: (i) limiting, segregating, or classifying a job applicant or employee in a manner that adversely affects his or her opportunities or status; (ii) participating in contractual or other arrangements that have the effect of subjecting individuals with disabilities to discrimination; (iii) using standards, criteria, or methods of administration in such a manner that results in or perpetuates discrimination; (iv) imposing or applying tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the test or selection criteria are job-related and consistent with County necessity; (v) failing to make reasonable accommodations to the known limitations of a qualified individual with a disability unless an accommodation would impose an undue hardship on the operation of the County; or (vi) denying employment opportunities because a qualified individual with a disability needs reasonable accommodation.

(3) "Reasonable accommodation" examples include: (i) making existing facilities used by County employees readily accessible to the disabled; (ii) restructuring non-essential elements of the job; (iii) flexible or modified work schedules/locations; (iv) reassignments to other positions; (v) acquisition or modification of equipment or devices; and (vi) permitting the use of vacation or an unpaid leave of absence.

(4) "Undue hardship" is an action requiring "significant difficulty or expense," considering: (i) the overall size of the County with respect to the number of employees, number and type of facilities, and size of the budget; (ii) the type of operation maintained by the County including the composition and structure of the workforce; and (iii) the nature and cost of the accommodation needed.

(5) "Qualified individual with a disability": An individual with a disability who, with or without reasonable accommodation, can perform the "essential functions" of the employment position held or desired.

(6) "Essential functions": Job tasks that are fundamental but not marginal (not every job task is to be included in determining the essential functions).

D. Liberty Interest Hearing—Claim of No Rational Basis for Different Treatment. The grieving applicant or employee has the burden of proving by a preponderance of the evidence that he or she has been treated differently than another similarly-situated person. If the applicant or employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of the evidence that the different treatment is rationally related to the effectuation of a legitimate County objective.

BOOK 2023
PAGE 89

E. Liberty Interest Hearing—Claim Arbitrary Decision—Not Legitimate County Objective. The grieving applicant or employee has the burden of proving by a preponderance of the evidence that the action taken against him or her is not rationally related to the effectuation of any conceivable legitimate governmental objective of the County. If the applicant or employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of the evidence that the action taken is rationally related to the effectuation of a conceivable governmental objective of the County.

F. Liberty Interest Hearing—Claim Arbitrary Decision—Violation of State Public Policy. The grieving applicant or employee has the burden of proving by a preponderance of the evidence that he or she is being treated in a manner that violates the public policy of the State of Arkansas as established by the Arkansas General Assembly or the Arkansas Supreme Court. If the applicant or employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of the evidence that the adverse employment decision, discipline, or dismissal is not in violation of the established public policy of the State of Arkansas.

G. Name Clearing Hearing—Claim of Deprivation of Liberty Interest in Future Employment. The grieving applicant or employee has the burden of alleging that a “stigmatizing charge” has been publicly communicated by the County or a County official or employee and requesting an opportunity to publicly clear his or her name. If the applicant or employee meets his or her burden, the County shall provide the applicant or employee a public hearing opportunity to clear his or her name.

10. **Issues Not Addressed in the Personnel Policy**

Questions or issues may arise that are not specifically addressed in the County’s Personnel Policy. As explained above, the County elected officials and County Judge have discretion to determine the application, meaning, and intent of the provisions of the Personnel Policy as they relate to the employees of that County elected official’s office. Consistent with that discretion, the County elected officials and County Judge may issue policy memorandums to County staff to address questions or issues that are not addressed in the County Personnel Policy.

PERSONNEL POLICY ACKNOWLEDGEMENT

In consideration of my employment, I agree to conform to the rules and policies of Van Buren County including those set forth in the Personnel Policy. I understand that my employment and compensation can be terminated with or without cause, and with or without notice, at any time, at the option of either Van Buren County or myself.

I hereby acknowledge that I have been given the opportunity to review the County Personnel Policy and that a copy has been issued to me. I understand that the policy is constructed in a manner that is to be easily understood, but that I am allowed to ask questions as needed to my supervisor, to the Association of Arkansas Counties, or to the Van Buren County Attorney.

I understand that revisions may be made to the policy at any time. I further agree that the policy is not a contract of any kind, implied or expressed. I understand that this policy, as written, is for my information only.

Employee Name (PRINT): _____

Employee Signature: _____

Date: _____

This page should be detached, completed, and filed with the Van Buren County Clerk's Office.