



# **Model Employee Handbook**

**for South Carolina Municipalities**

## Foreword

This handbook is a useful resource for policy development, but it is not a set of policies that can be adopted without modification. Each suggested policy is accompanied by an explanation of what the policy is designed to accomplish. These explanations appear in italics and should be carefully considered by the city. Also, blank lines indicate information the city should add. The additions will vary based on local policies, procedures and the municipality's form of government. Brackets indicate a suggested policy for the city to consider. The final policy should not contain any such italics, blank lines or brackets.

The handbook is not intended to replace current employment policies. Rather, it should be used as a resource to review current policies for legal and practical issues. It is designed to be a starting point — not an ending point — for municipal employment policies.

While the *Model Employee Handbook for South Carolina Municipalities* complies with current state and federal employment laws, Municipalities should have their final policies reviewed by legal counsel to ensure compliance with the law.

This handbook was written with the assistance of the Municipal Human Resources Association of SC and Gignilliat, Savitz & Bettis, L.L.P.

March 2013



# [Name of Town/City] Employee Handbook

Adopted [insert date]

## **DISCLAIMER**

ALL EMPLOYEES OF THE CITY ARE EMPLOYED AT-WILL AND MAY QUIT OR BE TERMINATED AT ANY TIME AND FOR ANY OR NO REASON. NOTHING IN ANY OF THE CITY'S RULES, POLICIES, HANDBOOKS, PROCEDURES OR OTHER DOCUMENTS RELATING TO EMPLOYMENT CREATES ANY EXPRESS OR IMPLIED CONTRACT OF EMPLOYMENT. THIS HANDBOOK REPLACES ANY PREVIOUSLY ISSUED POLICIES, PRACTICES AND UNDERSTANDINGS, WRITTEN OR ORAL, GOVERNING EMPLOYMENT. NOTHING CONTRARY TO OR INCONSISTENT WITH THE LIMITATIONS IN THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT UNLESS: 1) THE TERMS ARE IN WRITING; 2) THE DOCUMENT IS LABELED "CONTRACT"; 3) THE DOCUMENT STATES THE TERM OF EMPLOYMENT; AND 4) THE DOCUMENT IS SIGNED BY THE CITY [ADMINISTRATOR/ MANAGER/MAYOR] OR APPROVED BY VOTE OF COUNCIL.



[The disclaimer language is very important. The General Assembly passed a law in March 2004 that attempted to curtail litigation over employee handbooks. The law provides that handbooks do not form a contract as long as the disclaimer is 1) on the first page of the document, 2) typed in underlined, capital letters, and 3) signed by the employee. This law is effective only for documents issued **after** June 30, 2004.

An appellate court decision on a similar law held that "first page" means the cover of the document. To ensure compliance, the disclaimer should appear on the cover as well as the first page of the handbook. This second disclaimer page, below, is for the employee to sign (preferably in blue ink), date and return to management. The returned copy should be placed in a secure file.

Be sure to number the pages of the handbook. Ensure page 1 contains only the disclaimer.]

## **DISCLAIMER**

ALL EMPLOYEES OF THE CITY ARE EMPLOYED AT-WILL AND MAY QUIT OR BE TERMINATED AT ANY TIME AND FOR ANY OR NO REASON. NOTHING IN ANY OF THE CITY'S RULES, POLICIES, HANDBOOKS, PROCEDURES OR OTHER DOCUMENTS RELATING TO EMPLOYMENT CREATES ANY EXPRESS OR IMPLIED CONTRACT OF EMPLOYMENT. THIS HANDBOOK REPLACES ANY PREVIOUSLY ISSUED POLICIES, PRACTICES AND UNDER-STANDINGS, WRITTEN OR ORAL, GOVERNING EMPLOYMENT. NOTHING CONTRARY TO OR INCONSISTENT WITH THE LIMITATIONS IN THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT UNLESS: 1) THE TERMS ARE IN WRITING; 2) THE DOCUMENT IS LABELED "CONTRACT"; 3) THE DOCUMENT STATES THE TERM OF EMPLOYMENT; AND 4) THE DOCUMENT IS SIGNED BY THE CITY [ADMINISTRATOR/ MANAGER/MAYOR] OR APPROVED BY VOTE OF COUNCIL.

ACKNOWLEDGEMENT:

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name



# General Policies

## Equal Employment Opportunity

*[Federal and state civil rights laws cover employers with 15 or more employees. The laws prohibit discrimination on the basis of race, color, religion, gender, disability, genetic information and national origin. Municipalities with 20 or more employees are prohibited from discriminating against employees 40 or older. Municipalities covered by the civil rights laws should establish a policy that prohibits such discrimination. The policy also should instruct employees to report alleged instances of discrimination to the appropriate municipal authority so that it can be investigated and, if necessary, remedied before litigation arises.]*

*Municipalities with less than 15 employees are not covered by the civil rights laws. Nevertheless, such municipalities should consider having a policy that prohibits such discrimination because employees may still sue over discrimination under other theories of law. Various government grants and contracts also require nondiscrimination policies. Check with your grantor or contracting agency for requirements.]*

The City provides equal opportunity to all applicants for employment and administers hiring, conditions and privileges of employment, compensation, training, promotions, transfer and discipline without discrimination because of race, color, religion, gender, disability, genetic information, age or national origin. The City also prohibits retaliation against employees who have reported discrimination. Any employee who believes that he has been discriminated against in violation of this policy should report the matter to the \_\_\_\_\_ [administrator or manager/mayor/council].

## Affirmative Action Policy

*[Municipalities that receive federal money or contracts **may** be required to have an affirmative action plan. The municipality's employee handbook should not set forth the affirmative action plan. However, referencing the municipality's commitment to affirmative action serves as evidence of the municipality's efforts in the event the municipality's compliance with the plan or federal regulations is called into question.]*

*[Municipalities not required by federal or state law to have an affirmative action plan should **not** adopt one.]*

The City continues its efforts and commitment to fully utilize and treat equally minority groups, women, veterans and disabled employees at all levels and in all segments of the workforce through an affirmative action policy and plan. The goals of this affirmative action policy and plan are to eliminate institutional barriers in employment that tend to perpetuate the status quo and to eliminate the effects of any past discrimination.

## Anti-Harassment

*[The United States Supreme Court has held that employees generally may not sue their employers under the federal civil rights laws for harassment unless they have first reported the harassment to the employer to give it an opportunity to correct the problem. However, some courts have ruled the employee is relieved from first reporting the harassment if the employer does not have an adequate mechanism in place to receive such reports. The anti-harassment policy provides that mechanism and sets out the municipality's prohibition against harassment. Municipalities with fewer than 15 employees do not legally need this policy, but it is advisable.]*

Various laws and regulations generally prohibit employment decisions from being made on the basis of race, sex, religion, national origin, color, age, genetic information, disability or similar distinctions. In addition, it is our desire to provide a working environment in which employees are free from discomfort or pressure resulting from jokes, ridicule, slurs, threats and harassment either relating to such distinctions or simply resulting from a lack of consideration for a fellow human being.

The City does not tolerate harassment of any kind and forbids retaliation against anyone who has reported harassment in good faith.

## Sexual Harassment

Sexual harassment warrants special mention. Unwelcome sexual advances, requests for sexual favors, and other physical, verbal or visual conduct based on sex constitute sexual harassment when

1. Submission to the conduct is an explicit or implicit term or condition of employment; or
2. Submission to or rejection of the conduct is used as the basis for an employment decision; or
3. The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Sexual harassment may include explicit sexual propositions, sexual innuendo, suggestive comments, sexually oriented kidding or teasing, practical jokes, jokes about gender-specific traits, foul or obscene language or gestures, displays of foul or obscene printed or visual material, "put-downs" or condescending or derisive comments or terms based on gender, and physical conduct, such as patting, pinching or brushing against another person. This policy prohibits such conduct regardless of the gender of the perpetrator or victim.

Disputes sometimes arise as to whether conduct was "welcome" or "unwelcome." Conduct that would violate this policy if it were unwelcome violates the policy if anyone complains of it. However, not all conduct prohibited by this policy constitutes a violation of the law.

## Complaint Procedure and Investigation

*[How a municipality receives reports of harassment may depend on the size of its workforce. Municipalities with a large workforce may consider offering several options. At a minimum, the policy should provide for reporting harassment to a high-level official and provide an alternate to whom harassment can be reported if that high-level official is the one against whom the allegation is made. If the municipality has a human resources or personnel director, that person should be involved in investigating the complaint.]*

If you believe this policy has been violated by anyone with whom you come in contact on the job, regardless of whether it is by a fellow worker, a supervisor or a member of the general public, you should report the incident(s). You may do this by:

- a. reporting to your supervisor or to a higher level in your "chain of command." Complaints against the [Administrator/Manager/Mayor] should be made to the [Mayor (if Council or Council-Manager form of government)] [another member of Council (if Mayor-Council form of government)].
- b. reporting to the human resources director/personnel/administration.
- c. reporting on audiotape by dialing 803.123.4567.
- d. reporting to the complaint hotline at 1.800.123.4567.

Supervisors and managers who receive complaints of or become aware of harassment should coordinate with the human resources department.

Harassment allegations will be investigated, and the investigatory process may vary from case to case. The investigation is conducted as confidentially as possible consistent with the effective handling of the complaint and the goals of this policy. All employees have a responsibility both to cooperate fully with the investigation and to keep the

matter confidential, whether the employee is the accused person, the complaining one or merely a potential witness. Persons who are interviewed should not discuss the matter with co-workers, friends or management. This does not mean, however, that employees may not complain to civil rights agencies.

Employees may be asked to submit to a polygraph (lie detector) examination.

*[There is no legal requirement that employees report harassment in writing. Even if an employee only makes an oral report, the municipality is on notice of the harassment and should investigate the allegation(s) as best it can with the oral report. It is important for the policy to require that reports be in writing, however, as evidence the employee followed the procedure. The written report may be completed either by the employee making the complaint or by the member of management who receives the complaint.]*

### **-- Important --**

To avoid misunderstandings, complaints made to members of management or to the [personnel/human resources director] require the completion of a complaint report, either by you or by the person, to whom the complaint is made, summarizing the allegations and listing any witnesses to the alleged harassment. You should be sure to get a copy of this initial complaint report to confirm you have complied with this procedure.

These procedures have been established to enable you to get relief if you feel that you are the victim of harassment. The U.S. Supreme Court has said that as a general rule you may not sue the City for a violation of your rights unless you first give us notice and an opportunity to end the harassment. The reporting procedures we have adopted are intended to establish a clear record of what has been reported.

## **Employment Policies**

### **Hiring/Recruiting**

*[Many employers have policies stating that they prefer to promote from within. This practice is fine, but the policy should not promise internal candidates will be preferred over external candidates. There are any number of reasons a municipality may want to receive applications from the outside, even before rejecting internal applicants. The policy should avoid stating that the municipality will base its decision on the most “qualified” candidate because the candidate with the best résumé may not always be the best person for the job. The policy should require review of hiring decisions by a central authority, such as the human resources director or administrator, to ensure such decisions are made consistent with the municipality’s goals.]*

*[Larger municipalities may need a more structured hiring or recruiting policy. This is fine, but such policies should not be so rigidly constructed that they become difficult to administer or fail to serve the municipality’s needs.]*

The City endeavors to hire the most suitable candidate for open positions and encourages current employees to apply for positions for which they are qualified. The City may also solicit and consider applications from external applicants. Decisions to fill an open position that are made by lower levels of management require prior approval by the \_\_\_\_\_ [administrator or manager/mayor/council].

### **Nepotism/Employment of Relatives**

*[Employment of relatives poses special problems when one has supervisory authority – direct or indirect – over another or when they work together in the handling of money. In general, municipalities should avoid such situations. It is also generally advisable to prohibit employment of relatives of elected officials of the municipality as such situations can lead to questions of conflict of interest or favoritism.]*

People in the same immediate family may not be employed or continue to be employed if one directly or indirectly supervises another or interacts with another in the handling of money or compensation. For purposes of this policy, immediate family is defined as spouse, parent, child, grandparent, grandchild, brother or sister, parent-in-law, grandparent-in-law, brother-in-law and sister-in-law. The immediate family is also considered to include stepparents, stepchildren, stepbrothers and stepsisters when the employee and the step-relative have lived together regularly in the same household. Unrelated employees residing together or otherwise engaged in a close personal relationship (such as domestic partner, co-habitant or significant other) are treated as being within the immediate family of each other for the purposes of this nepotism policy. Members of the immediate family of elected officials of the City are not eligible for City employment.

*[If the municipality restricts employment of relatives, it must consider what to do when employees become related by marriage. Allowing the affected employees to decide between themselves who will give up his position avoids later complaints about the municipality's decision. If the employees cannot decide themselves, the municipality should consider a method that is objective, not subjective, to avoid claims of bias.]*

If employees become related by marriage and create a situation prohibited by this policy, one of the employees may be asked to give up his position. If the employees cannot choose which of them it will be, the employee having the lower budgeted annual compensation may be removed. The removed employee may be considered for other positions within the City for which he is qualified.

Situations not specifically addressed in this policy that, in the City's opinion, create a conflict of interest or give the appearance of a conflict of interest, will be handled at the City's discretion.

## Employment Status

*[Many municipalities employ a mix of full-time, part-time and temporary employees. It can be helpful, but is not necessary, to describe in the handbook each of these types of employment status. Also, the policy may make a general statement that certain types of employees are not eligible for benefits. It is important, however, the policy not give the impression that employees who work over a certain number of hours will be accorded a certain status.]*

**Regular full-time** employees are those who have completed their probationary periods and fill a full-time position with the City. Employees in this status are normally scheduled to work at least \_\_\_\_ hours per week. However, the City does not guarantee any minimum number of hours of work per week. Regular full-time employees are generally eligible for fringe benefits.

**Regular part-time** employees are those who have completed their probationary periods and fill a part-time position with the City. Employees in this status are normally scheduled to work less than \_\_\_\_ hours per week but may be called upon to work above their normally scheduled hours of work when workloads require. Regular part-time employees are generally [eligible/not eligible] for fringe benefits.

**Probationary employees** are part-time and full-time employees who have not yet completed their probationary period.

**Temporary employees** are those hired for a limited period of time or until completion of a particular project or projects. Such employees may work part-time or full-time hours depending on the needs of the City. Temporary employees are generally not eligible for fringe benefits.

## Probationary Period

*[Unfortunately, sometimes newly hired employees simply "do not work out." Municipalities subject to the civil rights laws fare better in investigations of such terminations if they have a probationary policy. In addition, probationary employees are generally accorded only limited grievance rights. How long an employee must serve on probation is a matter of choice. Decisions to extend the probation period should be approved by a central authority.]*

*[Municipalities with grievance procedures must, however, give employees grievance rights after they have worked for six months, regardless of their status.]*

All new employees, including former employees who have been rehired, are considered to be on probation for the first [six] months. This period is a continuation of the selection process and is a time in which the new employee should demonstrate that he is suited for his job. This period is not a guarantee of employment for [six] months. If the department head concludes at any time that the employee is not suited for his position, the employee may be terminated or may be placed on extended probation if approved by the \_\_\_\_\_ [administrator or manager/mayor/council].

The probation period ends successfully when the department head, not sooner than [six] months after the employee was hired, evaluates the new employee in writing and authorizes his classification as a “regular” employee.

*[The municipality should also consider whether newly promoted employees will serve a probationary period. It is a good idea to have a mechanism for handling newly promoted employees who turn out not to be suited to the position. This policy assumes the municipality has a leave of absence policy that covers “personal” reasons. If the municipality does not have such a policy, an employee who cannot be put in another position may be terminated and allowed to apply for future openings with the municipality.]*

All newly promoted employees are considered to be on probation in their new jobs for [three] months. This period is a continuation of the selection process and is a time in which the newly promoted employee should demonstrate that he is well suited for the promotion. It is not a guarantee of employment for [three] months.

If the department head concludes at any time during the promotion probationary period that the newly promoted employee is not suited for his new position, the employee may be removed from that position. If there is a vacancy in his former position that is to be filled, he may be returned to it. If there is no such vacancy, he may be considered for the filling of other vacancies for which he is qualified. If no other position is found for him, the employee may be [placed on personal leave of absence/terminated]. This action does not prohibit an employee from applying for future vacancies with the City.

## **[Alternate Policy to Probationary Period (above)]**

*[Some employers prefer to use the phrase “introductory period” instead of “probationary period.” This policy may be substituted for the Probationary Period policy above. It is not necessary to have both policies.]*

### **Introductory Period**

All new employees, including former employees who have been rehired, must complete a [six]-month introductory period. This period is a continuation of the selection process and is a time in which the new employee should demonstrate that he is suited for his job. This period is not a guarantee of employment for [six] months. If the department head concludes at any time that an employee is not suited for his position, the employee may be terminated or may continue in an extended introductory period if approved by the \_\_\_\_\_ [administrator or manager/mayor/council].

The introductory period ends successfully when the department head, not sooner than [six] months after the employee was hired, evaluates the new employee in writing and authorizes his classification as a “regular” employee.

*[The municipality should also consider whether newly promoted employees will serve an introductory period. It is also a good idea to have a mechanism for handling newly promoted employees who turn out to be not suited to the position. This policy assumes the municipality has a leave of absence policy that covers “personal” reasons. If the municipality does not have such a policy, an employee who cannot be put in another position should be terminated and allowed to apply for future openings with the municipality.]*

All newly promoted employees must complete an introductory period of [three] months. This period is a continuation of the selection process and is a time in which the newly promoted employee should demonstrate that he is suited for the promotion. It is not a guarantee of employment for [three] months.

If the department head concludes at any time during the introductory period that the newly promoted employee is not suited for his new position, the employee will be removed from that position. If there is a vacancy in his former position that is to be filled, he may be returned to it. If there is no such vacancy, he may be considered for the filling of other vacancies for which he is qualified. If no other position is found for him, the employee may be [placed on personal leave of absence/terminated]. This action does not prohibit an employee from applying for future vacancies with the City.

## **Outside Employment**

*[A municipality can reasonably expect its employees to devote their full attention to their work with the municipality. The municipality may prohibit outside employment that interferes with employees' work for the municipality. In addition, it is important that the municipality be aware of outside employment by its employees so the municipality can evaluate whether such employment might interfere or otherwise be incompatible with municipal employment.]*

The City expects an employee's work for the City to take precedence over any outside employment engaged in by an employee. Employees must get prior written approval from the \_\_\_\_\_ [administrator or manager/mayor/council] before engaging in other employment. Should the City, in its sole discretion, determine that the outside employment interferes with or is otherwise incompatible with employment for the City, the employee may be asked to choose between the jobs.

Employees may not engage in any private business or activity while on City work time or at City workplaces.

## **Conflict of Interest**

*[State ethics laws prohibit public employees from using their official position for their own personal gain or for that of a member of their immediate family or a business associate. The law also prohibits public employees from making governmental decisions in which they, their immediate family members or business associates have an economic interest.]*

City employees are covered by state ethics laws that prohibit public employees from using their public position for their own personal gain or to benefit a family member or business associate. State law also prohibits employees from making governmental decisions on matters in which they, their family or business associates have an economic interest. Employees must notify their supervisors in writing of any matter in which they, their family or business associates have an economic interest and in which they must act on behalf of the City. The supervisor must send the notification to the [administrator or manager/mayor/council] for review. If the City determines a potential conflict or appearance of conflict of interest exists, the matter will be reassigned to another employee.

## **Gifts and Gratuities**

*[The State Ethics Act prohibits public employees from soliciting or accepting gifts of more than a nominal value.]*

No employee may directly or indirectly solicit, accept or receive a gift under circumstances in which it could be inferred that the gift was intended to influence him in the performance of his official duties or was intended as a reward for an official act on his part. A gift is defined as any benefit, favor, service, privilege or thing of value that could be interpreted as influencing an employee's impartiality. A gift includes, but is not limited, to meals, trips, money, loans, rewards, merchandise, foodstuffs, tickets to sporting or cultural events, entertainment, and personal services or work provided by City suppliers or contractors. This policy is not intended to prohibit the acceptance of items of nominal value that are distributed generally to all employees.

A determination as to whether this policy has been violated is in the City's sole discretion.

## **Political Activity**

*[It is not uncommon for employees to become involved in local politics. Federal law prohibits employees who are employed in positions funded by federal funds from becoming candidates in partisan elections. Moreover, the municipality has an interest in maintaining the appearance of impartiality in the provision of public services.]*

Employees may fully and freely associate themselves in organizations of their own choosing, except those organizations whose purpose is the violent overthrow of the government of the United States, the State of South Carolina or any of its political subdivisions. In addition, supervisory employees may not join or support labor organizations that accept to membership subordinates of such supervisors.

In certain circumstances involving real or potential conflicts, employees who run for public office may be placed on an unpaid leave of absence until after the election. If an employee is placed on leave of absence, his employment will terminate upon his election to a partisan public office.

For purposes of this policy, an employee is considered a “candidate for public office” as soon as he begins actively campaigning for nomination or election, or when he files for candidacy, whichever comes sooner.

## **Workplace Privacy/Computer and Internet Use**

*[Employees generally may not sue their employers for an invasion of their privacy if they have no expectation of privacy. This policy is intended to remove any expectation of privacy an employee may have. Also, the policy should state whether employees may or may not use workplace computers for personal reasons.]*

*This policy is not designed to address matters concerning more general use of information technology, nor is it a replacement for an acceptable technology use policy, which is beyond the scope of this handbook. Municipalities with electronic networks need to consider protocols for accessing the networks and securing the data on the networks. Additionally, consideration should be given to whether employees are allowed to access the network remotely. In general, employees who are not exempt from overtime should not be allowed to have remote access.]*

The workplace is intended to be a place of work. An important part of work is communications and recordkeeping. No employee is at work 24 hours a day, seven days a week, and there are times when management needs access to communications or records maintained by employees in their individual workplaces. Personal items and personal communications received or stored on City property are not entitled to a guarantee of privacy.

Management may search City property and documents in City-owned vehicles, employee desks, lockers, file cabinets, electronic devices, etc. *[If the municipality conducts video surveillance, add the following: Further, to help provide for the safety and security of City employees, guests and property, the City conducts video surveillance of City property.]*

Electronic media raise similar issues. The City provides electronic and telephonic communication and, when necessary, computers and mobile devices to employees. Although assigned to the employee, these items still belong to the City. Similarly, any electronic files created on or software downloaded on, a City computer or mobile device belong to the City. Unauthorized programs and files may not be used or installed on City computers without the written permission of the City. Additionally, employees may not encrypt work and may not use passwords other than those assigned to them by the City. Employees may not destroy or delete files from City computers or mobile devices except pursuant to the City’s record retention policy.

The City reserves the right to review voice mail, electronic mail, computer and mobile device files, text messaging, and other electronic information generated by or stored in the City’s electronic systems. The City also reserves the right to report the finding of such reviews to appropriate agencies. *[Please select one of the alternates: Employees should not use City computers and mobile devices for personal reasons without the express written permission of the City. – or – The City consents to the reasonable personal use of its computers and mobile devices.] [If the City allows*

*reasonable personal use of the City's computers, insert the following:* Although the City consents to the “reasonable” use of its computers and mobile devices for personal business, what is “reasonable” is determined in the sole discretion of the City. The only sure way to avoid violating the City’s policy on personal computer and mobile device use is to not use the City’s computers for **any** personal purpose.]

The following use is absolutely forbidden:

1. to access any material the City considers to be pornographic; to transmit or knowingly accept receipt of any communication that is pornographic, obscene, or in the City’s opinion might contribute to a hostile work environment in that it demeans individuals on the basis of race, sex, age, national origin, disability or some similar distinction
2. to conduct business for outside employment or a side-business
3. to purchase any goods or services, even if charged to the employee’s personal credit card. [*Some municipalities may not object to employees’ purchasing personal items over the Internet or by email, especially if they do so while on breaks. If personal purchases are not an issue for the City, this prohibition may be removed.*]
4. to solicit others for non-work related reasons

City employees may not use personal electronic equipment (including but not limited to personal laptop computers, mobile devices and cellular phones) on City property or at City work sites to engage in conduct that would be prohibited if using City equipment.

**Important Notice:** The City has the capacity to examine the computer and mobile device usage of individual employees in detail. Even though an item has been “deleted” and the employee cannot retrieve it, this does not mean that the City cannot do so. It is also possible to generate a report of every Internet connection made by each user and of how much time was spent in each connection.

## **Social Networks, Personal Websites and Blogs**

*[Social media sites, such as Facebook, Twitter, MySpace or YouTube, are commonplace now. Municipalities must balance their employees’ rights of free expression with the municipality’s need to maintain an orderly work environment. In addition to content, the municipality must consider the issue of access to social media sites during working time and from work-issued computers or devices.]*

Social networking, personal websites, and blogs have become common methods of self-expression. The City respects the right of employees to use these media during their personal time. [*Select an alternative:* Employees may not access social media sites, other than for business use, during working hours or using City equipment. – *or* – The City consents to reasonable limited access to social media sites during working hours or using City equipment. What is “reasonable” is determined in the sole discretion of the City. The only sure way to avoid violating the City’s policy on personal social media site access is to not to access such sites at all during working hours or using City equipment.]

Employees must understand that material posted on these media may be read by persons other than those for whom it is intended. Employees are cautioned that they are responsible for the contents of social media posts they make. Posts that contain obscene or harassing material, that are unlawful, that contain personal attacks on coworkers, that reasonably call into question the employee’s judgment, or that reasonably cause concern among the public may result in discipline, up to and including termination from employment. Similarly, conduct that would violate City policies if done in person also violates City policy if done through social media. Employees may not disclose confidential information over social media or similar sites.

Employees who post on media sites and who have identified themselves as a member or employee of the City on those sites must make it clear that they are expressing their own views and not those of the City.

## **Inclement Weather**

*[For a municipality that regularly experiences weather that closes its offices, it is a good idea to adopt a policy describing how employees will be paid. Because no law requires that employees be paid for time not worked, the municipality may adopt whatever policy it wishes and may treat employees who are required to report differently from other employees. Municipalities should consider whether employees who cannot work due to the closure will be paid for the absence and, if so, whether they must use annual or other paid leave to cover the absence. Municipalities should also consider the problem of employees whose offices are not closed or whose jobs require that they report but who fail to show.]*

1. Employees whose departments are closed due to inclement weather are paid their regular straight time earnings if scheduled to work the day of the closure, up to a maximum of \_\_\_ days/weeks per calendar year.

*Or*

Employees whose departments are closed due to inclement weather may utilize annual leave for hours missed from work. The City may advance leave to employees who do not have sufficient leave to cover their absences.

2. Employees whose departments are not closed due to inclement weather or whose jobs require they report are expected to report to work. Those who fail to report may cover the absence from their paid leave balances, if any. *[Optional: The City may advance leave to employees who do not have sufficient leave to cover their absences.]*

*Or*

Employees whose departments are not closed due to inclement weather or whose jobs require they report are expected to report to work. Those who fail to report are considered unexcused and may not use paid leave to make up their work hours.

# **Wages and Hours of Work**

## **Classification System**

*[Many municipalities have classification systems that assign pay ranges to various positions. The law does not require such systems. If the municipality has such a system, it should not be reproduced in the handbook because pay ranges and position titles change, new positions are created and old positions are eliminated, as the municipality's needs change. Policies and classification systems should avoid promising employees any particular wage level. Municipalities that do not use a classification system do not need this policy.]*

The [administrator or manager/mayor/council] may develop a system for classifying positions within the City, including pay ranges for those positions. Classification systems and pay ranges are subject to change at any time. The establishment of pay ranges or grades for any position does not guarantee the occupant of that position any particular rate of pay.

## **Hours of Work**

*[The South Carolina Wage Payment Act requires, among other things, that employers notify employees in writing of the employee's normal work hours. Because different departments may have different operating hours and because some are open 24 hours a day, each department should be sure to post its own hours.]*

*[Employers may require that employees work overtime.]*

The City's normal hours of business are from \_\_\_\_ a.m. to \_\_\_\_ p.m. However, some departments must operate outside the City's normal hours of business, and schedules of employees of those departments may differ from the City's normal hours. Each department is responsible for scheduling its employees to meet the needs of the City. Employees may be required to work overtime.

*[There is no requirement under the law that employers allow employees breaks of any length. Most employers, however, allow employees meal breaks, and some allow employees short breaks other than meal times. If meal breaks are unpaid, they should be at least 30 minutes long. Any other breaks of less than 20 minutes must be paid. It is recommended the municipality not permit employees to combine paid breaks and meals in order to take a long meal break. It also is recommended that employees not be permitted to use breaks and meal time to arrive late or leave early.]*

Regular full-time employees who work during the City's normal hours of business receive one unpaid meal break of \_\_\_\_ minutes. Breaks and meals for employees whose departments operate outside the City's normal hours are set by those departments. All breaks are workload permitting.

Employees may not use break times and meal periods to report late or to leave early. Break periods may not be combined with the meal period.

*[If the municipality or a department automatically deducts unpaid meal times from employees' pay, it is important to notify employees that they must report any interruptions to their meal periods.]*

The City automatically deducts the unpaid meal break from nonexempt hourly employees' time. During meal periods, employees must completely cease all work. Any nonexempt hourly employee whose meal break is interrupted by work must report the interruption so that the meal period may be compensated. If an employee discovers that he was not paid for an interrupted meal period, or is instructed by any supervisor not to record unpaid meal periods, he must report it to the appropriate [personnel/human resource/payroll employee].

## **Overtime and Compensatory Time**

*[Most employees covered by the wage and hour laws (referred to as "nonexempt") who work more than 40 hours in a work week are entitled to 1.5 times their regular hourly rate for the hours actually worked over 40. Firefighters and law enforcement personnel are entitled to overtime after certain hours worked in a work period of up to 28 days.]*

*[The law allows public employers to compensate for overtime work with compensatory time off instead of cash payment. Employees who are compensated with compensatory time are entitled to 1.5 hours of paid time off for every hour of overtime worked. Compensatory time is subject to regulations: It must be "agreed to" prior to work: It cannot be accrued over a maximum (generally 240 hours; 480 for public safety and emergency response employees leave. It must be paid at termination. You generally must allow employees to use it when they wish, unless doing so would put an unreasonable burden on providing public services. Even if the municipality does not intend to use compensatory time, it may want to have a policy permitting its use to avoid any question of "agreement" in the event the municipality decides to use it.]*

Non-exempt employees, with the exception of law enforcement and fire suppression personnel, receive overtime premiums at 1.5 times their regular hourly rate for all hours worked in excess of 40. Law enforcement personnel receive overtime premiums after \_\_\_\_ hours in \_\_\_\_ days. Fire suppression personnel receive overtime premiums after \_\_\_\_ hours in \_\_\_\_ days. In lieu of cash payment, the City may credit employees with compensatory time at the rate of 1.5 hours for each overtime hour worked.

Employees must accurately record all hours worked and must have worked all hours recorded. Employees may not work "off the clock," and employees may not work overtime without the permission of their supervisor except in cases of emergency.

*[Exempt employees are not entitled to compensatory time. However, some employers do permit some sort of compensatory time arrangement. If the municipality decides to have such an arrangement, we suggest there be no formal accrual rate and that the policy provide compensatory time for exempt employees is not paid upon termination.]*

Employees who are exempt from overtime receive a salary that compensates them for all hours worked in the workweek. Such employees do not receive overtime pay or compensatory time off. *[Optional: However, the \_\_\_\_\_ [administrator or manager/mayor/council] may, in his sole discretion, grant additional paid time off to exempt employees who have worked unusual amounts of time in excess of the normal schedule, but no exempt employee has a right to such additional paid time off. There is no payment for such additional time upon termination.]*

## **Payment of Wages**

*[State law requires employers to tell employees when and where they will be paid and to notify them of any deductions from their wages. Employees may be paid by direct deposit. If they are paid by direct deposit, the city must provide a pay stub notifying them of the deposit.]*

*[It is a good idea to advise employees that items assigned to them in the performance of their jobs are an “advance of wages” so that if the employee fails to return such items when he leaves employment, the cost of the items can be deducted from the employee’s paycheck.]*

Employees are paid *[day of week/how often]* at their work stations *[Or: by direct deposit]*. Employees should examine their paychecks/pay stubs immediately to ensure they have been properly paid for all hours and that no improper deductions have been made. Any payment errors must be reported to payroll within 14 days.

The City deducts from employees’ gross pay taxes and withholding required by the taxing authorities. The City may also deduct from employees’ pay the employees’ share of any premiums or plan contributions for insurance, retirement and similar plans that are elected by the employee. The City may make other deductions as required by law or court order. The City does not make unauthorized deductions and will reimburse employees if such deductions are made inadvertently and reported to payroll.

Cash, debts owed the City, fringe benefits, uniforms, tools, equipment, vehicles, instruction manuals, keys, City identification cards and other items belonging to the City that are advanced or issued to an employee but not repaid or returned by him at the time of his termination are considered advances of wages, the value of which may be deducted from the employee’s pay.

## **Performance Evaluations**

*[Some municipalities have a formal system for conducting performance evaluations on a regular basis. Others conduct written reviews only infrequently or not at all. There is no law requiring performance evaluations. Regular evaluations help monitor employee performance. Remember, however, inaccurate performance evaluations can be damaging should an employee’s performance be the subject of an administrative charge or litigation.]*

The City may periodically conduct oral or written evaluations of employees’ performance. Employees must sign written evaluations. The employee’s signature does not necessarily indicate agreement with the contents of the evaluation, only that he has been made aware of it. Employees may attach comments to their evaluations. While favorable performance evaluations may be a factor in determining wage increases, no employee is entitled to a wage increase because he receives a favorable evaluation.

# Holidays

*[No law governs holiday observance. The municipality should list the holidays it “observes” and decide how to pay employees who are required to work on an observed holiday. The holidays listed below are only examples of commonly observed holidays. There is no legal requirement to pay additional compensation for holiday work although most employers either pay additional “straight time” or give employees who must work an alternate day off or additional annual leave. If you do pay additional time for holiday work, clearly state how it is paid for various classes of employees. For example, confusion may arise if the policy says “will receive holiday pay for the day,” which may mean something different to someone who works a 12-hour shift than it does to someone who works 9-5, Monday through Friday.]*  
*[Some employers require employees work the day before and after a holiday, or be on approved leave, to receive holiday pay.]*

The City observes the following holidays:

- New Year’s Day
- Memorial Day
- Fourth of July
- Labor Day
- Thanksgiving Day
- Christmas Day
- Additional day in conjunction with Christmas

Holidays that fall on Saturday are generally observed the preceding Friday. Holidays that fall on Sunday are generally observed the following Monday. *[Optional: Departments that are required to provide service 7 days per week will observe holidays on the day of the holiday.]*

Council may declare additional days as holidays.

Employees who are scheduled to work on a holiday [receive an alternate day off to be scheduled by the supervisor *or* accrue [eight] hours annual leave *or* receive an additional [eight] hours pay].

*[Optional: Employees must work the day before and after a holiday or be on approved leave in order to be paid for a holiday.]*

## Leave Policies

### Annual Leave

*[Employers are not required to provide employees with any paid leave. Almost all employers, however, offer some sort of paid personal or annual leave. The policy should describe how leave is accumulated, how it may be used and any restrictions placed on it. Confusion may arise when accruals are described in “days.” It is preferable to describe accruals in terms of hours accrued per month or per pay period.]*

Regular full-time employees accrue annual leave as follows: *[describe accrual]*.

Regular part-time employees accrue annual leave as follows: *[describe accrual]*.

Employees desiring to take annual leave should give their supervisors at least two weeks advance notice. Annual leaves will be scheduled as much as practical in accordance with employee requests. The City’s workload demands, however, are paramount.

*[It is not uncommon for several employees to ask for the same time period off, such as during holidays. There is any number of ways to handle such conflicts. The language below gives the municipality flexibility to consider several factors.]*

When more employees request particular days off than can be accommodated, supervisors will make annual leave assignments taking into account the date the requests were made, special needs for particular annual leave dates and the employees' lengths of service.

*[Municipalities should consider whether to cap the amount of leave that may be accumulated. The purpose of annual leave is principally to provide employees with paid time off to rest or to cover other absences. Limiting accrual tends to encourage employees to use their annual leave. If the municipality pays for annual leave at termination, limiting accrual also makes the impact on the municipality's budget more predictable.]*

The maximum number of annual leave hours that can be accumulated is \_\_\_\_\_. Employees who have reached the maximum will not accrue further annual leave until their annual leave balance falls below the maximum.

*[Employers are not required to pay for unused annual leave at termination. If they do not, they must inform employees of the fact in writing. Any conditions to payment for accrued leave also must be in writing. Most employers do not pay for accrued leave if an employee is dismissed for misconduct. In addition, a municipality may condition an employee's receiving pay for accrued annual leave at termination on giving and working a notice.]*

Accrued, unused annual leave will be paid for at termination only if the employee is terminated or resigns for non-disciplinary reasons. Employees who resign must give and properly work a two-week notice of resignation to receive accrued, unused annual leave. The notice may be waived by the \_\_\_\_\_ [administrator or manager/mayor/council].

Annual leave balances may be reduced for disciplinary reasons.

## **Sick Leave**

*[As with annual leave, no law requires employers to provide paid sick leave. Most, however, have some sort of paid sick leave for employees. The policy should specify the maximum days an employee may carry over from one year to the next or the maximum the employee may accrue. Like annual leave, the policy should avoid terms like "days," and speak in terms of hours.]*

Regular full-time employees accrue sick leave as follows: *[describe accrual]*

Regular part-time employees accrue sick leave as follows: *[describe accrual]*

Employees may carry over a maximum of \_\_\_\_ sick leave hours.

Sick leave is paid when an employee is excused from work due to his own non-occupational disability. Employees may be required to submit a physician's statement of disability before being eligible for sick leave payment, including when absent for prolonged periods of time or if the employee has been counseled for excessive use of sick leave. In some circumstances, employees may be required to provide certification from their physician that they are able return to work. Abuse of leave or failure to call in as required may result in denial of paid sick leave.

*[While many employers do pay for accrued, unused annual leave at termination, most do not pay for sick leave. Such policies must be in writing. Additionally, municipalities that are members of the South Carolina Retirement System may be allowed to use a set amount of accrued, unused sick leave at termination in the calculation of their retirement benefit. The optional language is designed to accommodate that practice. (Municipalities should contact the South Carolina Retirement System or the Public Employee Benefits Authority for details.)]*

Employees are not paid accrued, unused sick leave at termination. *[Optional: However, employees may use a total of \_\_\_\_ days toward retirement.]*

## **Military Leave**

*[Federal and state law regulate military leave for public employees. . Federal law provides for returning-to- work employees called to service in the armed forces. State law requires public employers to pay employees called to service for 15 days per year and an additional 30 days in certain situations. These laws are technical and subject to some degree of interpretation. For that reason, municipalities should not attempt to reprint the laws' requirements in the policy.]*

Employees are entitled to leave of absence and reinstatement upon return from leave of absence for military service (including Reserve and National Guard duty) as may be provided by applicable state and federal law. The provisions of these laws change from time to time and for that reason no effort is made to set forth the law in this policy.

Employees on military leave will receive paid leave for up to 15 days per military fiscal year for training or call-up. In addition, if an employee is called upon to serve during an emergency the employee will receive paid leave of absence for not exceeding thirty additional days.

## **Jury Duty**

*[Employers are not required to provide paid leave for jury duty but many do. If the municipality provides paid leave for jury duty, it should consider capping the amount of time per year for which it will pay. Also the policy should state whether the employee will be required to pay to the municipality any compensation received for serving as a juror.]*

An employee will be paid for wages lost from scheduled straight time work due to jury service up to a maximum of 80 hours per calendar year.

To qualify for this payment, an employee called for jury service must

- a. give his supervisor notice of such service within two work days of the time the employee is called for such service,
- b. report for work when released by the court on any day of jury service,
- c. submit a written statement from the court indicating the days of jury service and the time released each day, and
- d. *[Optional: turn over to [finance/payroll] any compensation received.]*

## **Bereavement Leave**

*[Bereavement or funeral leave is not required by law but is offered by some employers. How much is offered and whether to offer it at all is up to the municipality. If it is offered, the municipality should consider whether it will require proof of death.]*

An employee will be paid for time actually lost from straight time scheduled work up to \_\_\_ hours due to attendance at the funeral of a member of his immediate family, which is defined as spouse, parent, child, grandparent, grandchild, brother, sister, parent-in-law, grandparent-in-law, brother-in-law and sister-in-law. The immediate family will be considered to include stepparents, stepchildren, and stepbrothers and stepsisters only when the employee and the deceased had lived together regularly in the same household at or prior to the time of death. The City may require proof of relationship and attendance at the funeral.

Employees may be excused from work to attend the funerals of other family members and, upon request, may be paid for such absences from accrued annual leave balances.

## Physical Disability and Personal Leave

*[This policy is designed to provide some type of leave of absence for municipalities with fewer than 50 employees. The Family and Medical Leave Act does not cover employers with fewer than 50 employees.]*

1. An employee who has completed his initial probation (and any extension thereof) may request a leave of absence for up to \_\_ months when unable to work because of sickness, pregnancy or injury on or off the job. Such an employee may also apply for leave of absence for personal reasons. Personal leaves are granted only in the discretion of the \_\_\_\_\_ [administrator or manager/mayor/council].
2. Employees are requested to apply for leaves of absence as far in advance of need as is possible, but an employee may be placed on leave status without application when the circumstances warrant such action.
3. Physical disability leave begins on the first day of absence.
4. After the employee has exhausted his annual and/or sick leave, as a general rule, an employee on leave of absence is not entitled to wages or fringe benefits and does not accrue fringe benefits.
5. Employees on leave of absence may not engage in other employment.
6. Employees desiring to return to work from an unpaid leave of absence should notify the \_\_\_\_\_ [administrator or manager/mayor/council] in writing at least ten days prior to their desired return date. If the City finds that the employee is fit to resume his duties, the employee may be returned to his previous position if it is vacant and is to be filled, or to some other position of equal or lesser compensation for which he is qualified and where there is a vacancy to be filled. If the employee is not returned to active employment, he may be continued on leave of absence status until he is returned to active duty status or his leave of absence expires, whichever occurs sooner. Any employee who has not been reinstated within [six] months following the commencement of a leave of absence is terminated. This action does not affect the employee's eligibility to be considered for hire as a new employee at some future time. Further, employees with circumstances that warrant special consideration should bring those circumstances to the attention of management.

## Leave of Absence

*[If a municipality has 50 or more employees, its employees have rights under the Family and Medical Leave Act. (See Section B.) In addition, the municipality needs to provide a policy for employees who do not meet the FMLA requirements or whose reason for leave is not covered by the FMLA. (See Section A.)]*

### A. Physical Disability & Personal Leave

#### Applies to:

- **Employees Employed Less than 12 Months**
- **Employees Who Have Worked Fewer than 1250 Hours in the Preceding 12 Months**
- **Employees Whose Reasons for Leave Are Not Covered by FMLA**

1. An employee who has completed his initial probation (and any extension thereof) may request a leave of absence for up to \_\_ months when unable to work because of sickness, pregnancy or injury on or off the job. Such an employee may also apply for leave of absence for personal reasons. Personal leaves are granted only in the discretion of the \_\_\_\_\_ [administrator or manager/mayor/council].
2. Employees are requested to apply for leaves of absence as far in advance of need as is possible, but an employee may be placed on leave status without application when the circumstances warrant such action.
3. Physical disability leave begins on the first day of absence.

4. After the employee has exhausted his annual and/or sick leave, as a general rule, an employee on leave of absence is not entitled to wages or fringe benefits and does not accrue fringe benefits.
5. Employees on leave of absence may not engage in other employment.
6. Employees desiring to return to work from an unpaid leave of absence should notify the \_\_\_\_\_ [administrator or manager/mayor/council] in writing at least ten days prior to their desired return date. If the City finds the employee is fit to resume his duties, the employee may be recalled to his former job if a vacancy exists that is to be filled. If no such vacancy exists, the employee may be returned to his previous position if it is vacant and is to be filled, or to some other position of equal or lesser compensation for which he is qualified and where there is a vacancy to be filled. If the employee is not returned to active employment, he may be continued on leave of absence status until he is returned to active duty status or his leave of absence expires, whichever occurs sooner. Any employee who has not been reinstated within six months following the commencement of a leave of absence is terminated. This action does not affect the employee's eligibility to be considered for hire as a new employee at some future time. Further, employees with circumstances that warrant special consideration should bring those circumstances to the attention of management.

## **B. Family and Medical Leave Act (FMLA)**

**Applies only to employees employed 12 months or longer and who have worked 1250 hours or more in the preceding 12 months, both prior to commencement of leave.**

### **General**

Employees who meet the length of service and hours worked requirement described above have rights under the Family and Medical Leave Act. As a general rule, employees must request leaves of absence under this law and policy but, in appropriate situations, employees may be placed on leave status without application.

### **Reason for Leave of Absence**

1. Medical and Family Leave. An eligible employee may be entitled to a leave of absence under this law and policy if a serious health condition, including disability resulting from an on-the-job injury, prevents the employee from being able to perform his job, if the employee's spouse, child or parent has a serious health condition and the employee must be absent from work in order to care for that relative, or to care for a natural child, adopted child, or formally placed foster child, provided that entitlement to leave to care for a child who is newly born or newly received in the employee's household shall end 12 months after a natural child is born or 12 months after an adopted or foster child is received in the employee's household.
2. Military Caregiver Leave. An eligible employee whose spouse, parent, child or next-of-kin is a covered service member of the Armed Forces of the United States may be entitled to leave of absence to care for the service member if he is injured while on covered active duty.
3. Qualifying Military Exigency Leave. An eligible employee whose spouse, parent or child is a member of the Armed Forces of the United States and is on active duty or called to active duty in federal service may be entitled to a leave of absence due to one or more qualifying exigencies arising out of the active duty or call to active duty. Qualifying exigencies are: (1) Short-notice deployment (*i.e.*, notice of 7 days or less); (2) Military events and related activities; (3) Childcare and school activities (regular or routine childcare by the employee does not count); (4) Financial and legal arrangements; (5) Counseling; (6) Rest and recuperation; (7) Post-deployment activities; and (8) Additional activities not encompassed in the other categories, but agreed to by the employer and employee.

### **Proof of need for leave of absence may be required regardless of the type of leave taken.**

An eligible employee will be granted a leave of absence under this law and policy if a serious health condition, including disability resulting from an on-the-job injury, prevents the employee from being able to perform his job; if the employee's spouse, child or parent has a serious health condition and the employee must be absent from work to care for that relative; or if the employee must care for a natural child, adopted child, or formally placed foster child, provided that entitlement to leave to care for a child who is newly born or newly received in the employee's household shall end 12 months after a natural child is born or 12 months after an adopted or foster child is received in the employee's household.

### **Length of Leave**

- 1. Medical and Family Leave.** An eligible employee may take the equivalent of a total of 12 work weeks of leave during any 12 consecutive months for his own serious health condition, that of a parent, spouse or child, or to care for a newly born or newly received child. Leave to care for a newly born or newly received child must be taken consecutively. Leave required because of the employee's own serious health condition or that of a spouse, child, or parent, may be taken intermittently or by means of a modified work schedule when necessary.
- 1. Military Caregiver Leave.** Leave to care for an injured service member may be taken for up to 26 work weeks in a single 12 month period. Any leave taken by the employee for any other FMLA-qualifying reason will count against the 26 weeks of leave permitted to care for an injured service member.
- 1. Qualifying Military Exigency Leave..** Leave taken because of a qualifying exigency is available for up to 12 work weeks in any 12 consecutive months. Leave taken because of a short notice deployment is limited 7 days from the date of notice, and leave taken to be with the service member during periods of rest and recuperation are limited to 5 days per period of rest and recuperation. Leave taken to attend post-deployment activities must be taken within 90 days of the end of active duty service.

### **Coordination of Leave and Paid Time Off**

An employee who must be absent due to his own serious health condition will be paid for time lost from work first from any accrued sick leave balances then from any accrued annual leave balances and similar balances. An employee who takes leave for any other reason will be paid for time lost from work from any accrued annual leave balance and similar balances. Leave taken under this policy counts toward the employee's 12-weeks (or 26-weeks, where appropriate) of leave regardless of whether all or part of the employee's leave is paid.

### **Effect of Leave on Accrual of Fringe Benefits**

- 1. Health benefit plan.** Employees taking leave under this policy must continue to pay their portion of health benefit plan premiums on the same date that such portion of premiums would be deducted from the employee's wages. Failure to make timely premium payments may result in a lapse or termination of benefits.
- 2. Accrual of paid leave.** Unpaid time lost from work due to leave granted under this policy is not considered time worked for the purpose of accrual of paid time off.

### **Employee Responsibility**

Employees who request leave under this policy must give 30 days advance notice or such lesser amount of notice as is possible in the particular circumstances. When the need for leave is unforeseeable, the employee must follow the normal procedure for reporting an absence.

Employees may not engage in other employment while on leave of absence without the express written permission of the [administrator/manager/mayor].

## Termination of Leave of Absence

A leave of absence under this policy ends when the need for the leave of absence ends or when the maximum leave described above has been taken, whichever occurs sooner.

## Reinstatement

At or before the conclusion of the FMLA leave of absence the employee is entitled to reinstatement to his former position or to a position equivalent to his former position. The employee must demonstrate that he is fit for duty and must give reasonable notice of intent to return to work.

## Extension of Leave Without Benefits

*[The next two paragraphs are not required by FMLA but are a good idea. An employee who is unable to return to work at the end of his 12-week FMLA period may have a disability covered by the Americans with Disabilities Act. The ADA requires employers to make reasonable accommodations for disabled employees, and extra leave time may be a reasonable accommodation, depending on the circumstances. This portion of the policy is designed to avoid claims of ADA discrimination that could result from automatically terminating an employee at the end of the FMLA leave period.]*

An employee who is unable to perform the duties of his position due to his own disability and who has exhausted his entitlement to leave under the Family and Medical Leave Act by taking 12 consecutive weeks of leave may, in the discretion of the [administrator/manager/mayor], upon written application, be granted up to an additional 14 weeks of leave. This additional leave of absence does not entitle the employee to reinstatement or to payment of any portion of his health benefit plan premiums. If the employee is able to return to work prior to the exhaustion of his extended leave, he may be returned to his previous position if it is vacant and is to be filled, or to some other position of equal or lesser compensation for which he is qualified and where there is a vacancy to be filled. If the employee is not returned to active employment, he may be continued on extended leave of absence status until he is returned to active duty status or his extended leave of absence expires, whichever occurs sooner.

Employees who have exhausted their FMLA leave under other circumstances, but who continue to require leave that would qualify for FMLA leave if such leave had not been exhausted, may apply for an extended leave of absence for personal reasons. Such extended leaves are granted only at the discretion of the [administrator/manager/mayor].

## Automatic Termination of Employment

An employee's employment automatically terminates if he does not return to full active employment status at the conclusion of his leave of absence or extended leave of absence. This does not affect the employee's ability to reapply for the position at a later time. Further, employees with circumstances that warrant special consideration should bring those circumstances to the attention of management.

## Special Situations

- 1. Spouses.** When both a husband and a wife are employed by the City, their combined right to a leave of absence because of the birth or placement of a child, or to care for a newly born or placed child or to care for a parent with a serious health condition is 12 weeks in a 12 month period, or 26 weeks in a single 12 month period to care for an injured service member.
- 2. Key employees (salaried employee in highest paid 10 percent of all employees).** Such employees may be denied reinstatement rights if reinstatement would cause substantial and grievous economic injury to operations.

### Notice of Rights

Federal law requires that we provide you with the notice of your rights that appears on the following page.

## **Basic Leave Entitlement**

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition, or
- For a serious health condition that makes the employee unable to perform the employee's job.

## **Military Family Leave Entitlements**

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings. FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service member during a single 12-month period. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

## **Benefits and Protections**

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

## **Eligibility Requirements**

Employees are eligible if they have worked for a covered employer for at least one year, for 1,250 hours over the previous 12 months, and if at least 50 employees are employed by the employer within 75 miles.

## **Definition of Serious Health Condition**

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

## **Use of Leave**

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

## **Substitution of Paid Leave for Unpaid Leave**

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

## **Employee Responsibilities**

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30-day notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures. Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

## **Employer Responsibilities**

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

## **Unlawful Acts by Employers**

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

## **Enforcement**

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

# Benefits

*[Rising retirement and healthcare costs, legislative reforms and regulatory changes cause the terms of benefits plans to change frequently. Because such changes are often unilaterally decided by the entity providing the benefits or are mandated by law, it is a good idea to avoid describing the benefits plans in too much detail. Employees should be told whom they can contact for detailed information on benefits offered.]*

The City currently offers a competitive benefits package. The terms of the City's benefits plans are subject to change, and the City is not responsible for any changes in or elimination of benefits or benefit plans. Please see the \_\_\_\_\_ [appropriate personnel/human resource/payroll employee] for specific information on the City's benefit plans.

**Health Insurance** – [insert a brief description of who is covered and what portion of benefits is paid by the employee.]

**Retirement** – [insert brief description. If applicable, state that benefits and participation are determined by the State Retirement System.]

**Disability** – [insert brief description]

**Workers' Compensation**

*[Workers' compensation benefits are governed by state law and should not be discussed in detail in a policy. Employees should be instructed to report any on-the-job injuries to their supervisors.]*

City employees are covered by workers' compensation for on-the-job injuries. Benefits are governed by state law and not set by the City. Employees must report immediately **any** on-the-job injury, regardless of severity, to their supervisor.

# Discipline

*[Municipalities with a small workforce need only a short policy that puts employees on notice they may be disciplined and that they are expected to sign counseling memoranda. Municipalities with larger workforces may want to provide more guidance for supervisors, who are often responsible for administering some level of discipline. Regardless of size, no policy should provide for progressive discipline. Such policies lead to litigation. In addition, no discipline policy can substitute for proper training of supervisors. They should be instructed to document discipline and use good judgment in administering it.]*

## **Discipline Policy [for Small Municipalities]**

Employees are subject to disciplinary action up to and including discharge when the \_\_\_\_\_ [administrator or manager/mayor/council] determines that such action is necessary for the good of the City.

Employees must sign disciplinary notices, counseling memoranda, performance appraisals and similar documents. The employee's signature indicates only that the employee is aware of the action taken and does **not** indicate that the employee agrees with such action.

An employee who refuses to sign such a document will be relieved of all duty until the document is signed. If the document has not been signed and returned by the end of the employee's next scheduled work day, the City will consider the employee to have resigned.

## Discipline Policy [for Large Municipalities]

*[Municipalities with larger workforces may want a policy that provides more guidance for supervisors. Even for large municipalities, it is a good idea for terminations to be reviewed and require approval of the administrator, manager or mayor.]*

*[Under the Fair Labor Standards Act regulations, exempt employees may be suspended in full-day increments for disciplinary reasons provided the reasons for suspension are set out in the policy.]*

As is the case with all organizations, instances arise when an employee must be disciplined. The discipline that may be imposed includes but is not limited to oral reprimand, written warning, probation, reduction of leave balances, suspension without pay, demotion and discharge. In addition, the City may procedurally suspend an employee pending investigation to determine if disciplinary action is appropriate. If the City determines an unpaid suspension is appropriate discipline, exempt employees will be suspended in full-day increments; non-exempt employees will be suspended in partial or full-day increments. In addition, the City may impose a combination of disciplinary measures. **THE DISCIPLINE IMPOSED IN ANY PARTICULAR SITUATION IS AT THE SOLE DISCRETION OF THE CITY. NOTHING IN ANY OF THE CITY'S POLICIES OR BY VIRTUE OF ANY PAST PRACTICE OF THE CITY REQUIRES THE CITY TO FOLLOW ANY PARTICULAR COURSE OF DISCIPLINE.** Supervisors and department head must submit terminations to the [administrator or manager/mayor/council] for review.

Employees must sign counseling memoranda, policy statements, performance evaluations and other similar documents. The employee's signature does not necessarily indicate agreement with the contents of the document, only that he has been notified of the contents of the document. If an employee refuses to sign the document he will be relieved of duty without pay until the document is signed. If the document has not been signed and returned by the end of the employee's next scheduled work day, the City will consider the employee to have resigned.

## Examples of Conduct Warranting Disciplinary Action

It is not possible to list all acts and omissions that may result in disciplinary action. The disciplinary action that is appropriate for any particular misconduct is at the sole discretion of the City. The following are merely examples of some of the more obvious types of misconduct that may result in disciplinary action, up to and including discharge. **THE CITY RESERVES THE RIGHT TO TREAT EACH EMPLOYEE INDIVIDUALLY WITHOUT REGARD FOR THE WAY IT HAS TREATED OTHER EMPLOYEES AND WITHOUT REGARD TO THE WAY IT HAS HANDLED SIMILAR SITUATIONS.**

- a. conviction of or plea of guilt or no contest to a charge of theft, violation of drug laws, sexual misconduct, offense involving moral turpitude or offense that affects the City's reputation or that reasonably could create concern on the part of fellow employees or the community. Employees who are arrested may be relieved of duty (with or without pay) pending the City's determination on continued employment.
- b. incompetence
- c. unauthorized absence or tardiness or a pattern of absenteeism or tardiness
- d. insubordination, including disrespect for authority, or other conduct that tends to undermine authority
- e. failure or refusal to carry out instructions
- f. unauthorized possession or removal, misappropriation, misuse, destruction, theft or conversion of City property or the property of others
- g. violation of safety rules; neglect; engaging in unsafe practices

- h. interference with the work of others
- i. threatening, coercing or intimidating fellow employees, including “joking” threats
- j. dishonesty
- k. failure to provide information; falsifying City records; providing falsified records to the City for any purpose
- l. failure to report personal injury or property damage
- m. neglect or carelessness
- n. introduction, possession or use of illegal or unauthorized prescription drugs or intoxicating beverages on City property or while on duty anywhere; working while under the influence of illegal drugs or intoxicating beverages; off-the-job illegal use or possession of drugs. For purposes of this policy, an employee is “under the influence” if he has any detectable amount of any such substance in his system.
- o. unsatisfactory performance
- p. violation of City policies
- q. lack of good judgment
- r. any other reason that, in the City’s sole determination, warrants discipline

## **Drug Free Workplace Policy**

*[This policy forbids employees from using illegal drugs, whether at work or not, and from showing up to work under the influence of drugs or alcohol. The policy also satisfies notice requirements under the federal and state drug-free workplace acts.]*

All employees of the City are prohibited from swallowing, inhaling, injecting, dealing in, or otherwise using, illegal drugs and substances (such as marijuana, cocaine, LSD, heroin, meth, etc.). Further, this prohibition applies to the misuse, abuse or any unlawful use or possession of otherwise legal drugs. These prohibitions apply to use at any time, both on the job and off the job. City employees are, of course, permitted to possess any substance when required by their jobs or for the purpose of lawful delivery to another person.

Similarly, employees are prohibited from reporting to work, using or being anywhere on City property while under the influence of alcohol, illegal drugs or improperly used controlled substances. For purposes of this policy, “under the influence” means having any detectable amount of any such substance in the employee’s system. Employees who are informed by their healthcare provider or pharmacist that a drug they are using may impair their ability to safely perform work must report that to their supervisors. The City will determine whether an employee may continue to work.

*[Municipalities can order employees to submit to drug screens when the municipality has reasonable suspicion of illegal drug use but generally may not randomly test all employees. Exceptions to the prohibition on random testing are safety sensitive employees (e.g., sworn law enforcement officers and fire personnel) and those required to be tested by federal law (e.g., CDL drivers, transit drivers, employees working on natural gas pipelines, employees operating boats subject*

*to Coast Guard jurisdiction). Municipalities that wish to perform random screening of safety sensitive employees or have employees subject to mandatory federal drug screening should have a testing policy tailored to their individual needs. Municipalities that wish to conduct preemployment drug screens for all employees should consult their legal counsel.]*

The City may test employees for drug or alcohol use in violation of this policy any time the City has reasonable suspicion of a violation of the policy.

*[State and federal drug-free workplace acts require municipalities that receive state or federal grants or contracts to notify employees that they must report any conviction for violation of the drug laws in the workplace within five days of the conviction. As a practical matter, management will likely know of an employee's **arrest** for a violation of the drug laws, whether in the workplace or not, long before the employee is ever convicted. Policies should not state the municipality will wait until the disposition of criminal charges before making employment decisions, as it could take months before a criminal charge is ultimately resolved.]*

## **Notice to Employer, State and Federal Grantor/Contracting Agencies and Law Enforcement Authorities**

As a condition of employment, employees agree to notify the City within five calendar days after any criminal conviction for the workplace manufacture, distribution, dispensation, possession or use of illegal drugs and prescription drugs not prescribed for the individual employee's use. As required by the state and federal drug free workplace acts, the City will notify within ten days all state and federal grantors/contracting agencies of such employee convictions. "Conviction" means a finding of guilt, imposition of a sentence, a plea of no contest or a plea of guilty.

The City will notify law enforcement authorities whenever illegal drugs are found in the workplace.

# **Grievance Procedure**

*[Municipalities are not required to have a grievance procedure. If they do have one, it must substantially conform to the requirements of the state's County and Municipal Employee Grievance Procedure Act. If adopted, the matters considered grievable are defined by the Act. Who appoints the committee and who reviews the committee's recommendation depends upon the form of government. Under the council form of government, council may request the administrator review the recommendation and report to council, or council may review the recommendation directly. Under the mayor-council and council-manager forms, the mayor/manager makes the final decision.]*

*[Small municipalities may want to opt out of the formal grievance procedure because the administrator/manager/mayor is generally aware of the circumstances about which the employee is complaining. Municipalities that do not adopt a grievance procedure should have some sort of review process in place so the administrator/manager/mayor reviews all terminations before they become final.]*

## **General**

This procedure is adopted in accordance with the "County and Municipal Employees Grievance Procedure Act," Section 8-17-110, *et seq.*, Code of Laws of South Carolina, 1976, as amended.

1. A grievance is defined as a complaint by an employee that he has been treated unlawfully or in violation of his rights under City policies with regard to his employment. This definition includes, but is not limited to, discharge, suspension, involuntary transfer, promotion and demotion. An employee's level of compensation or classification is not the proper subject of a grievance except as it applies to alleged inequities within the employee's department. However, if an employee believes he has not received or been credited with or has otherwise lost wages or benefits to which he is entitled, he must present his grievance in accordance with this procedure. *[Optional: Written warnings are not grievable.]*

2. An employee who believes he has a grievance must follow the following procedure:
  - Step 1. He must file his grievance within 10 calendar days of the event giving rise to the grievance or his knowledge of the events giving rise to the grievance. He is to follow the chain of command in his department, appealing to each successive level of supervision. These steps may be oral. At each level, each supervisor has four calendar days to render a decision. If no decision is made within this time, the grievance is considered denied. If a supervisor at a particular level is unavailable to consider the grievance, it is considered denied and the employee is to appeal to the next level of supervision.
  - Step 2. If the head of the department in which the employee is employed denies the grievance, this decision is final as to any grievance brought by an employee in his initial probationary period. A new employee is considered probationary until his probationary evaluation is completed and approved by his department head.
3. Employees other than probationary employees may appeal to the Employee Grievance Committee the denial of their grievances by department heads by filing a written request for appeal at the City's [human resources department]. This must be done within seven calendar days of the department head's denial of the grievance. The written request for appeal must include the following information:
  - a. the purpose of the appeal and what recommendation is requested of the Grievance Committee, and
  - b. a statement that the chain-of-command has been followed in the appeal as is required by the grievance procedure

The [personnel/human resources] department staff will assist in preparing the appeal, if requested.

4. Within ten days of receiving the employee's request, the Grievance Committee chairman will schedule the requested hearing and notify the Grievance Committee, the employee requesting the hearing, the affected department and the [personnel/human resources] department.

## **The Employee Grievance Committee**

The [administrator or manager/mayor/council] appoints a committee composed of [three - nine] employees to serve for terms of three years, except that the members appointed initially are appointed so that their terms will be staggered. The [council/manager/mayor] may also appoint two alternates to serve when other members are disqualified or unable to serve. Approximately one-third of the terms shall expire each year. A member continues to serve after the expiration of his term until a successor is appointed. Any interim appointment to fill a vacancy for any cause prior to the completion of a member's term is for the unexpired term. Any member may be reappointed for succeeding terms at the discretion of the [council/manager/mayor]. All members are selected on a broadly representative basis from among City employees. Members employed in the same department as the grieving employee and members having formed an opinion on the issues prior to the hearing may not participate in that employee's hearing.

1. The Committee annually selects its own chairman from among its members. The chairman serves as the presiding officer at all hearings that he attends but may designate some other member to serve as presiding officer in his absence. The chairman has authority to schedule and to re-schedule all hearings.
2. A quorum consists of at least two-thirds of committee members, and no hearings may be held without a quorum.

3. The presiding officer has control of the proceedings. He may take whatever action is necessary to ensure an equitable, orderly and expeditious hearing. Parties must abide by his decisions, except when a Committee member objects to a decision to accept or reject evidence, in which case the majority vote of the Committee governs.
4. The Committee has the authority to call for files, records and papers that are pertinent to any investigation and that are subject to the control of the City; to call for or consider affidavits of witnesses; to request and hear the testimony of witnesses; to consider the results of polygraph examinations; and to secure the services of a recording secretary in its discretion. The Committee has no authority to subpoena witnesses, documents or other evidence, nor may any City employee be compelled to attend any hearing. All proceedings are tape-recorded. Witnesses, other than the grieving employee and the department representative, are sequestered when not testifying. All witnesses must testify under oath.
5. All hearings are held in executive session unless the grieving employee requests, at least 24 hours prior to the hearing, that it be held in open session. The official tape recording and the official minutes of all hearings are subject to the control and disposition of the [council/manager/mayor].
6. Neither the grieving employee nor the department may be assisted by advisers or by attorneys during the hearing itself. However, the Committee may have an attorney available to it at any and all times it considers necessary and the [personnel/human resource] department may provide assistance in reading written materials to the Committee at the request of a grieving employee.
7. In disciplinary actions by department heads and their subordinate supervisors, the employee must receive in reasonable detail written notice of the nature of the acts or omissions that are the basis for the disciplinary action. This notice may be amended at any time 24 hours or more before the commencement of the hearing. The department must demonstrate the disciplinary action is for the good of the City. The department makes the first presentation. The Committee may base its findings and recommendations (and council/manager/mayor its decision) on any additional or different grounds developed from the employee's presentation.
8. In non-disciplinary grievances, the employee must establish that a right existed and it was denied him unlawfully or in violation of a City policy. The employee makes the first presentation.
9. In all grievances, the grieving employee and the department are each limited to one hour of initial presentation. The party required to make the first presentation is entitled to a ten-minute rebuttal of the other party's presentation. The chairman may appoint himself or another member of the Committee as timekeeper.
10. In all grievances, presentations may be oral, in writing or both. They may be supported by affidavits or unsworn signed statements from witnesses, records, other documentary evidence, photographs and other physical evidence. Presentations are made by the grieving employee (with reading assistance from a member of the [personnel/human resources] department if the employee desires) and by a managerial employee of the affected department. Parties may request the Committee call witnesses, and a list of potential witnesses should be submitted to the Committee five days prior to the hearing. However, neither party may question the other party or question any witness called by the Committee.
11. The Committee will, within 20 days after hearing an appeal, make its findings and recommendation and report such findings and recommendation to the [council/manager/mayor]. The [council/manager/mayor] will review the findings and recommendation. [*Optional alternate language for council form of government*: The Committee will, within 20 days after hearing an appeal, make its findings and recommendation and report such findings and recommendation to the Administrator. The Administrator will review the findings and recommendation and forward them, along with his recommendation, to

Council.] If the [council/ manager/mayor] approves, the Committee's recommendation becomes final. The decision and copies of the decision will be transmitted by the Committee to the employee and to the head of the particular department involved. If, however, the [council/manager/mayor] rejects the Committee's recommendation, the [council/manager/mayor] will make [its/his] own decision without further hearing, and that decision is final. Copies of the decision will be transmitted to the employee and to the head of the particular department involved.

12. Nothing in this grievance procedure creates a property interest in employment or a contract of employment, nor does this procedure limit the City's authority to terminate any employee when the City or respective elected or appointed official considers such action to be necessary for the good of the City.



PO Box 12109  
Columbia, SC 29211  
Phone: 803.799.9574  
Fax: 803.933.1299  
[www.masc.sc](http://www.masc.sc)