

BOONE COUNTY
EMPLOYMENT
POLICY
For At-Will Employment

BOONE COUNTY EMPLOYMENT POLICY
For At-Will Employment

May 12, 2008

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BOONE COUNT EMPLOYMENT POLICY

For At-Will Employment

1. PURPOSE

- A. The purpose of this document is to establish at-will employment as the default employment policy for Boone County and to state the **General Employment Policies** issued by the Quorum Court in its capacity as the legislative branch of County government. The General Employment Policies set forth herein apply uniformly to all county employees because they relate exclusively to “employee practices and policies of a general nature.” (AGO 2000-151)
- B. **Executive Employment Policies** are those adopted by an elected county officer to apply to the employees of that office in the course of administering “the day-to-day administrative responsibility” of his or her elected office. A.C.A. §14-14-805(2). An elected official can create and administer his own employee discipline measures, subject, however, to the condition that these cannot contravene these general, uniformly applicable measures adopted by the quorum court. (AGO 2000-151)
- C. Each and every county employee is entitled to request a hearing before the County Grievance Committee in the event the employee believes that the executive decision of an elected official violates the Constitution, the Law or the General Employment Policy duly adopted by the Quorum Court. (AGO 2000-151)
- D. Nothing in this General Employment Policy adopted by the Quorum Court creates a property right nor establishes grounds upon which discipline or dismissal must be based.

2. GENERAL COUNTY POLICY

- A. The County is to treat all employees and citizens in a manner that is i) rationally related to the effectuation of legitimate County objectives and ii) uniformly applied to all persons similarly situated
- B. No official or employee of the County is to abuse or misuse his or her governmental power.
- C. No official or employee is to engage in any overt act that is either illegal (contrary to applicable statutes or judicial rulings) or unconstitutional (contrary to the U.S. Constitution or the Arkansas Constitution.
- D. No official or employee is to omit the performance of any duty that is affirmatively required by Applicable laws (statutes or judicial rulings).
- E. No official of county government shall “be interested, either directly or indirectly, and any contract or transaction made, authorized, or entered into on behalf of the county...or accept or receive any property, money or other valuable thing, for his [or her] use or benefit on account of, connected with, or growing out of any contract or transaction of a county.” A.C.A. §14-14-1202
- F. No official of county government is to engage in any act that would constitute “corruption, gross immorality, criminal conduct, malfeasance, misfeasance, or nonfeasance in office.” A.C.A §14-14-1311

- G. Each elected official of the County is to fully and completely administer the day-to-day affairs of his or her office of County government on behalf of the County, in a manner that is in accord with applicable laws (statutes or judicial rulings), the constitutions (U.S. and Arkansas), and this general policy.
- H. Use of deadly force against another person by the Sheriff or any Deputy Sheriff is limited to the following: 1) to effect an arrest or to prevent the escape from custody of an arrested person whom the officer reasonably believes: a) there is probable cause to arrest the felony suspect, b) the felon cannot otherwise be apprehended, and c) the felon either: i) *had used deadly force in the commission of the felony or, ii) would use deadly force against the officer or others if not immediately apprehended* or 2) to defend himself or a third person from what he reasonably believes to be the use of imminent use of deadly force.

3. COUNTY EMPLOYMENT POLICY

- A. Pursuant to its authority as the legislative branch of County government, the Boone County Quorum adopts “at-will” employment as the default employment policy for each County Employee. At-will employment is not for a specific period of time and employment may be terminated at any time, without notice or liability of any kind (except for wages earned and unpaid) and with or without cause. Unless rehired by a newly elected supervising county official, employment shall cease at the conclusion of the county’s biennium (December 31 of even numbered years). If, notwithstanding this document, any employee contends that he or she has a property right in his or her employment or a substantial expectancy of continued employment (express, implied, written, or oral) until “just cause” exists for reduction or removal in pay or position, then that employee shall assert such contention at a “property right” grievance hearing requested in the time and manner set forth in this policy.
- B. It is the County’s policy to provide equal opportunity for all qualified persons; to prohibit unlawful discrimination in employment practices, compensation practices, personnel procedures and administration of benefit plans; and to otherwise provide the same or similar treatment and opportunities to all persons similarly situated.

4. ADMINISTRATION OF PERSONNEL POLICIES AND PRACTICES:

Each elected official will have the responsibility of implementing and following the personnel policies and procedures adopted by the Quorum Court of Boone County. A copy of the personnel policies and procedures will be posted in each elected office and a personal copy given to each employee.

5. DEFINITIONS:

- A. Elected Officials – The County Constitutional Officers which are County Judge, Sheriff, County Clerk, Circuit Clerk, County Treasurer, County Collector, County Assessor and County Coroner.
- B. Full-Time Employee – an employee, other than sheriff’s, office, who works 35 hours per week and a sheriff’s office employee who works not more than 171 hours in a 28 consecutive day period.

- C. Part-Time Employee – an employee working less than 30 hours per week is a part-time employee. Part-time employees do NOT receive benefits.
- D. Immediate Family – Father, mother, wife, husband, children and grandparents.
- E. Temporary Employees – seasonal or work control employees who are hired for a limited period of time or for a specific job. Such employees shall not be entitled to any fringe benefits that apply to full-time employees, unless such benefits are specifically extended to an individual employee prior to his/her appointment.

6. CONSTITUTIONALLY PROTECTED CONDUCT

- A. It is the policy of Boone County not to violate the Constitution or the laws of Arkansas or the United States.
- B. Should any applicant, employee, or person requesting County assistance or services contend that he or she has been unlawfully discriminated against because of the race, color, religion, gender, national origin, age or disability or that he or she has been unlawfully punished for the exercise of a constitutionally protected liberty right (e.g., free speech, free association, political patronage, access to courts, privacy, etc.) or treated in any other unlawful or unconstitutional manner, the applicant or employee shall request, in the time and manner set forth in this county employment policy, a “liberty right” hearing before the county grievance committee to provide the county’s final policymaker with authority an opportunity to learn of the alleged unlawful discrimination or unlawful punishment and to thereby have an opportunity to voluntarily conform the conduct of county officials and county employees to the requirements of county policy.

7. HIRING AND PROMOTING

- A. The at-will employment policy set forth herein applies equally to hiring and promoting. Nothing herein shall create a property right in employment, entitlement to be hired or promoted or an expectancy of continued employment. Nothing herein establishes grounds upon which hiring or promoting must be based.
- B. Prospective employees who are required to register with the selective service system must certify compliance with the Military Selective Service Act as a condition for employment.

8. EMPLOYEE BENEFITS

Eligibility for vacation leave or other employee benefits does not create any property right in employment or any expectancy of continued employment.

9. “RATIONAL BASIS” FOR REDUCTION OR REMOVAL OF PAY OR POSITION

- A. A County Official may reduce or remove pay or position for any reason that is rationally related to the effectuation of any conceivable legitimate County objective.
- B. Examples: it is not possible to list all “rational bases” for reduction or removal of pay or position; examples include (without limitation):

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

10. QUALIFICATIONS FOR EMPLOYMENT

A. Residence:

Applications for employment will be accepted from anyone who wishes to apply upon forms provided by the County. For accessibility and other reasons, applicants who are residents of the County will be given consideration over non-residents, all other qualifications being equal.

B. Falsification of Information:

Intentional falsification of information given in applying shall be cause for denial of hiring or dismissal after hiring.

11. HIRING PROCEDURES

A. Hiring Recommendations and Decisions:

1. All appointments to positions with Boone County shall be made on the basis of merit and fitness for the particular position. The office in which a vacancy exists shall examine all applications and interview whatever applicants the official deems necessary.
2. Some jobs with the county may require physical examinations to determine the fitness of an applicant. If this is functionally necessary, the judgment of fitness will rest with the doctor as to the fitness of the applicant for the position.

B. No elected or appointed official may hire a member of his/her family to a position directly or indirectly responsible to such official.. For the purpose of this section, member of family shall be defined as Mother, Father, Son, Daughter, Husband, Wife, Brother, Sister, Mother-In-Law, Father-In-Law, Brother-In-Law, Sister-In-Law, Uncle, Aunt, Nephew, Niece, First Cousin, Grandfather, Grandmother, Grandson, Granddaughter, stepchildren, and step-parents. In addition, no person may be hired if a member of his/her family has supervisory authority over that employee.

Provided further, that this Ordinance shall not be construed to require any spouse or relative presently employed to be terminated.

12. PAY AND WORKING HOURS

- A. The salary and benefits for all elected officials and their employees shall be set by the Quorum Court.
- B. Pay Periods – There will be twenty-six (26) pay periods per year. Paydays for county employees and officials will be on a bi-weekly basis with the pay periods from the Monday to Sunday and payday being on Friday. Direct deposit service will be available at the employee's option.
- C. Hours:

- 1. The Boone County Courthouses will be open to transact business from 8:00 a.m. to 4:30 p.m. Monday through Friday. All courthouse offices with at least two (2) employees will be open 8-1/2 hours per day including the noon hour. Courthouse offices with only one (1) employee will arrange for telephone answering during noon with adjacent offices. Courthouse employees will have a one (1) hour – lunch break.
- 2. The Quorum Court will assign a specific number of hours to be worked per week, being recognized as the Courthouse's standard workweek. The Standard Work Week for all County courthouse employees will be thirty-five (35) hours per week. The work time for sheriff's office employees will be one hundred seventy one (171) hours in twenty eight (28) consecutive days . The work week for County Road Department employees will be forty (40) hours per week.

The Boone County Road Department will be open to transact business from 7:30 a.m. to 4:00 p.m. Monday through Friday. It is the policy of the County Road Department to take a thirty (30) minute lunch break.

- 3. At the discretion of the County Judge the County Road Department may work special hours during the period of Central Daylight Savings Time.

13. EMPLOYEE BENEFITS

A. Health Insurance:

The Boone County government provides a group health insurance plan for all its full-time employees. Any employee wishing to join this insurance plan must apply for coverage within the first thirty (30) day period of his employment. The amount (percentage) of insurance to be withheld from each employee's payroll check is determined by the Quorum Court.

B. Retirement Plan:

The Social Security System and the Arkansas Public Employees Retirement System cover the employees of Boone County.

C. Occupational Injury:

All employees of the County shall be covered under the State Workers' Compensation Law. Any employee incurring an "on-the-job" injury should notify his supervisor immediately. All rules

and regulations concerning Workers' Compensation need to be posted on the bulletin board of that office.

D. Non-Occupational Injury:

1. Any regular full-time employee involved in an accident (not job related) and the injury Sustained in such accident necessitates that the employee be absent from work, the employee Shall be entitled to receive pay at a regular salary for the accumulated sick leave credited to the Employee at the time the accident occurred.
2. When an employee is covered by any form of health and accident insurance for which the county pays any part in the cost of such insurance and wherein the employee receives compensation from the insurance carried for loss of time due to accident or illness, then in that case, the employee shall be entitled to receive the difference between his regular salary and the amount payable under the insurance coverage for the number of days of accumulated sick leave credited to the employee at the time of injury or illness. The number of day allowed to be determined by the ratio of regular salary to the amount received for the loss of time under health and accident insurance.

E. Training and Education:

1. With the approval of the elected official and subject to the availability of funds, Boone County assist employees with training and education in subject areas that are directly related to their employment, or which may qualify employees for future promotion.
2. Temporary employees shall not be entitled to any of the fringe benefits that apply to permanent employees. This exclusion includes paid holidays, vacation, insurance, paid sick leave , and retirement.

14. COMPENSATORY TIME

- A. Any county employee who makes less than \$455 per week (regardless of job duties) is eligible for overtime compensation.
- B. Police officers and similar public safety employees (including jailers) *who perform work such as preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; and similar work* are eligible for overtime compensation.
- C. Otherwise, only employees defined by the Fair Labor Standards Act (Title 29, Part 541 of the Code of Federal Regulation) as "non-exempt" -- which means NOT employed in a bonafide "executive, administrative, or professional capacity" -- will be entitled to overtime compensation.
- D. The fact that an employee is paid a "salary" has nothing to do with whether an employee is (or is not) entitled to receive overtime compensation.
- E. As authorized by the Fair Labor Standards Act, the County's employees who are eligible to receive overtime compensation shall receive, in lieu of over-time pay, compensatory time off at

a rate of one and one-half hours for each hour of time worked in excess of the normal work week.

- F. The normal work period shall be 35 hours per week for all courthouse employees; the normal work period for County Road employees shall be 40 hours per week. The normal work period for employees engaged in the provision of law enforcement (including jailer) and ambulance services shall be not more than 171 hours in a 28 consecutive day work period.
- G. Overtime shall only be worked in emergencies or when public health, welfare, and the safety of the general community is in danger.
- H. No employee shall accrue more than 120 hours of compensatory time. After accruing the maximum 120 hours of compensatory time, an employee eligible to receive overtime compensation shall be paid overtime in cash (subject to the normal withholdings for taxes, and etc.) at a rate of one and one-half times the rate earned for each hour of time worked in excess of the normal work period.
- I. An employee who has accrued compensatory time shall, upon termination of employment, be paid for the unused compensatory time at a rate of compensation of not less than:
 - 1. The average regular rate received by such employee during the last three (3) years of the employee's employment or
 - 2. the final regular rate received by such an employee, which ever is higher.
- J. An employee who has accrued compensatory time off and who has requested the use of such compensatory time off, shall be permitted to use such time within a reasonable period after making a request if the use of compensatory time does not unduly disrupt the operation of the employing agency.
- K. No overtime hours shall be worked without the approval of the Elected Official or such supervisory personnel designated by the Elected Official to approve the overtime.
- L. All Elected Officials and Department Heads will maintain time sheets to be filled out by each non-exempt employee on a weekly basis under oath and signed by the Elected Official or Department Head. The time sheets will be provided to the County Clerk's Office at the end of each month to be kept as a permanent record. If the Elected Officials or Department Heads fail to give the required approved time sheets to the County Clerk, the County Clerk is not to issue subsequent paychecks.
- M. The County requests that any compensatory time incurred in any 28-day work period be used by the employee during the next 28 day work period.
- N. Paid leave days shall not count toward calculating overtime unless the employee actually worked on a paid leave day (e.g. holiday worked by an employee).
- O. A person who accepts employment of the County or continues in its employment shall be considered deemed to have agreed to receive compensatory time off in lieu of overtime compensation.

15. OVERTIME LIABILITY CONTROL PROCEDURE

- A. Non-exempt Employees Required to Personally Sign and Certify Timesheets: Each non-exempt employee shall to *personally* sign his or her employee time sheet, stating: "My signature certifies that the above recorded hours worked and leave taken are correct."
- B. County Clerk To Keep Employee Time Sheets As Permanent Record: The signed/certified employee time sheets shall be timely provided to the County Clerk's Office at the end of each pay-period to be kept as a permanent record (for 5 years).
- C. County Clerk Will Figure Payroll From Employee Time Sheets: The County Clerk will figure the payroll, including overtime, directly from the signed/certified time sheets, relying upon the employee's signed certification that the hours worked and the leave time taken are correct.
- D. County Clerk Not to Issue Check Without Signed/Certified Timesheet: The County Clerk shall NOT issue paychecks if the required signed/certified employee time sheets are not signed/certified *by the employee* (personally) or are not timely delivered to the County Clerk.
- E. Log Book of the County's Total Overtime Liability: The County Clerk shall keep a record in a separate log book of accumulated compensatory time, showing all compensatory time earned and all the compensatory time-off taken by the employees who have earned it.
- F. Report Total County Overtime Liability Monthly: The County Clerk shall inform the County The County Treasurer, the County Judge and the Quorum Court on a monthly basis as to the Amount of the County's accrued compensatory time debt.
- G. Pay Overtime in Cash When Required by Policy: The County Clerk shall *go to cash* and issue An overtime check to the employee whenever the total hours of overtime worked exceeds the Compensatory time limit set by the Quorum Court in the County's Employment Policy.
- H. Accumulated Comptime Debt to be Paid in Full By End of Year: Since the Arkansas Constitution prohibits deficit spending, multi-year contracts, and lending the credit of the county, the comp-time debt accumulated by the County throughout the year shall be paid in full at the end of each year.
- I. Quorum Court to Manage the County's Comptime Debt from Month to Month: The Quorum shall use its appropriation (which includes re-appropriation) power to modify the County's budget to pay at the end of the year the comptime debt that has accumulated throughout the year.

16. LEAVES OF ABSENCE

1. Vacation Leave:

- 1. The County will grant annual leave to all full-time employees. All vacation leave should be scheduled in advance by authorization of their employer. Vacation leave time will accumulate on the anniversary date of employment. All full-time employees will earn leave as follows:
 - a. Those employees with one (1) year of County employment, five (5) working days.

- b. Those employees with two (2) through six (6) years of County employment, ten (10) working days.
 - c. Those employees with seven (7) through fifteen (15) years of County employment, fifteen (15) working days.
 - d. Those employees with sixteen (16) or more years of County employment, twenty (20) working days.
2. Annual leave is not applicable to temporary part-time employees.
 3. Employees will receive compensation at their normal rate of pay for all vacation leave. This compensation will be paid at the regularly scheduled pay period following the use of vacation leave.
 4. The elected official will take into consideration the wishes of the employee and the needs of the County when scheduling vacation leave. The County employee cannot take vacation leave more than two (2) weeks consecutively unless there are extenuating circumstances that are first approved by the elected official or supervisor in charge. Employees are to be encouraged to utilize their full vacation leave each year. Vacation leave cannot be accumulated from year to year.
 5. Employees who are separated from employment with the County shall receive compensation for their accumulated vacation leave up to the maximum specified above. The estate or next of kin of employees separated from employment by death shall be compensated for the accrued vacation leave of the deceased employee at regular rate of pay.

B. Sick Leave:

1. All full-time employees with Boone County are eligible for sick leave with pay. Sick leave shall accumulate at the rate of .5 day of sick leave for each calendar month of the employee's service with the County or a maximum of six (6) days per calendar year.
2. All accumulated leave, which is not used in any year, may be carried over as accumulated leave for succeeding years up to a maximum of thirty (30) working days.
3. An employee may be eligible for sick leave due to a personal illness or physical incapacity resulting from causes beyond the employee's control, or due to illness in the immediate family, which would require the employee to take care of the family.
4. An employee who is unable to report for work due to one of the designated reasons shall report the reasons for his/her absence to their supervisor or someone acting for their supervisor within one (1) hour from the time he/she is expected to report to work. Sick leave with pay shall not be allowed unless such report has been made. Proper sick leave forms shall be completed and forwarded to the elected official's office immediately after each leave.
5. For each day of sick leave taken beyond two (2) consecutive days, employees must present a written statement from a physician certifying that the employee's condition prevented him/her from appearing for work and indicating when the employee can return to work.

6. If an employee accepts sick leave benefits based on false statements or evidence, he/she shall be subject to disciplinary action. The County reserves the right to investigate any application for sick leave, including examination of satisfactory medical proof of sickness or disability.
7. An employee who consumes all of the sick leave benefits for which he/she is eligible shall be placed on an inactive status without pay unless the Quorum Court votes to extend sick leave benefits due to extenuating circumstances.
8. Employees who are separated from employment with the County shall not be paid for accumulated sick leave.

C. Emergency Leave:

Full-time employees shall be granted up to a maximum of three (3) workdays emergency leave with pay in the case of the death or imminent death in the immediate family of an employee. The travel time may be granted, with the prior approval of the elected official, in addition to the three (3) days when excessive travel time is involved. The elected official may grant emergency leave of not more than one (1) day for an employee to be pallbearer or attend a funeral of someone not within the immediate family.

D. Maternity Leave:

1. Accumulated sick leave and vacation leave will be granted for maternity use, after which leave without pay must be used.
2. A pregnant employee may remain on duty as long as her work has no adverse effect on her health or the performance of her job duties. A physician's statement evaluating the employee's physical fitness to continue employment may be required.

E. Military Leave:

Employees who are members of a military reserve or National Guard unit shall be entitled to two (2) weeks military leave, with the County reimbursing the employee the difference between his regular pay and military pay.

F. Absence Without Leave:

An absence of an employee from duty, including any absence of one (1) day or part of a day that is not authorized by the elected official shall be deemed Absence Without Leave. Such absence shall be without pay and subject to disciplinary action. Absences without leave for three (3) consecutive days shall be deemed as vacating the job and are grounds for dismissal.

G. Miscellaneous Leave:

Full-time employees may be granted leave with pay for jury duty, serving as a witness (when subpoenaed), or other citizenship duty obligations. The elected officials must approve all such leave in advance.

H. Holidays:

1. All full-time employees shall be entitled to the following holidays for which they will be paid their regular rate of pay. Boone County observes the following holidays, any other day off will be by prior approval of the Quorum Court.

New Year's Day	January 1
General Robert E. Lee's Birthday Martin Luther King, Jr.'s Birthday	Third Monday in January
George Washington's Birthday	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Fourth Friday in November
Christmas Eve	December 24
Christmas Day	December 25
Employee's Birthday	Birth Date

2. When a holiday falls on a Saturday, it shall be observed the preceding Friday. When a Holiday falls on a Sunday, it shall be observed on the following Monday.

I. Personnel Record Keeping:

1. The office of each elected official shall be responsible for maintaining records of leave accumulation and utilization for each employee. The records in each office shall be official and shall be the final determining factor in disputes over accumulated leave.
2. Each employee who utilizes a day of sick leave, vacation leave, emergency leave, military leave or miscellaneous leave shall fill out a form indicating when such leave was taken. This completed form shall be given to the elected official who shall examine the form for approval and to insure its accuracy.
3. Each elected official shall periodically inform the employees of the amount of accumulated vacation and sick leave, which had been accrued by each employee.
4. It is important that if an employee changes address, telephone number, or marital status that he/she

notify the elected official or supervisor which he reports to of this change. This is important in case the County must mail any information that it feels you need such as withholding statements for your income taxes.

17. FMLA LEAVE POLICY

- A. Purpose. The purpose of the Family and Medical Leave Act (FMLA) of 1993 is to balance the needs of families with the demands of the workplace. It was designed to promote our country's interest in preserving family unity while accommodating the legitimate interests of employers.
- B. Equality. The FMLA legislation seeks to minimize the potential for employment discrimination on the basis of gender consistent with the Equal Protection Clause of the Fourteenth Amendment by assuring that leave is available when necessary for both men and women.
- C. Twelve weeks unpaid leave. The county will grant up to twelve (12) weeks of unpaid leave per year to employees who need to care for family members.
- D. Qualifying employees. An employee must have been employed for at least twelve (12) months and worked at least 1,250 hours during the previous twelve (12) months to qualify for FMLA leave.
- E. Purposes for which leave can be taken. Employees are entitled to take up to twelve (12) weeks unpaid FMLA leave a year for:
 - 1. The birth of the employee's child;
 - 2. The placement of a child with the employee for adoption or foster care;
 - 3. To care for the employee's spouse, child or parent who has a serious health condition;
 - 4. A serious health condition rendering the employee unable to perform his or her job.
- F. Intermittent Leave. The employee may take leave intermittently or on a reduced work schedule When medically necessary due to the employee's or a family member's illness.
- G. Notice required. The employee is to provide at least thirty (30) days notice, if possible, of the Intention to take leave.
- H. Medical certification. The county requires medical certification that the leave is needed due to to the employee's own serious health condition or that of a family member. The county may, at the county's expense, require a second medical opinion. If the first and second opinions differ, the county may request a third opinion, at the county's expense, which is then binding.
- I. Continuation of benefits. The county will continue the employee's health insurance under the same conditions as if the employee were working. Under this circumstance, the employee will still be required to pay his or her share of the premium if the county's health insurance plan provides for such co-payments. Leave under this Act is not a "qualifying" event under COBRA. if the employee does not return to the job, the employee shall be liable to the county for repayment of the health insurance benefits paid by the county during the employee's FMLA leave.
- J. Return to the Job. Upon returning from leave, an employee is entitled to be restored to the same or equivalent position with equivalent pay, benefits and other terms and conditions of employment.

K. Concurrent leave. FMLA leave will automatically run concurrent with all other available leave time.

18. INFORMAL PROCEDURE FOR REPORTING/RESOLVING PERCEIVED HARASSMENT

- A. This policy provides an informal procedure for reporting any conduct or condition perceived to be Race, color, religion, gender, sex, national origin, age, or disability harassment to enable the county to receive timely notice and to act affirmatively, if needed, to assure compliance with the law. If this informal procedure does not achieve the desired result, the affected person should utilize the Grievance Hearing procedure to bring the matter before the County Grievance Committee.
- B. Race, color, religion, gender, sex, national origin, age, or disability harassment (by conduct or Condition) is prohibited.
- C. If you consider a County official's or a County employee's conduct or workplace condition to be race, color, religion, gender, sex, national origin, age, or disability harassment, report it immediately to any supervisor or elected official.
- D. The supervisor or elected official receiving any such report shall report the matter to the appropriate elected official or officials which, for the implementation of this procedure, shall be the elected official(s) responsible for managing the day-to-day affairs of the office of county government in which the alleged harassment occurred or in which the alleged harasser works.
- E. Any supervisor or elected official receiving any report of race, color, religion, gender, sex, national origin, age or disability harassment shall take appropriate action to remedy any race, color, religion gender, sex, national origin, age or disability harassment and shall respond to the person reporting the matter so the person originating the report can be informed of the action taken.
- F. If the person reporting the alleged harassment is not satisfied with the action taken or if the alleged harassment continues, that person shall report the matter to the County's Prosecuting Attorney or Deputy Prosecuting Attorney.
- G. Except to the extent needed to implement this policy and remedy the alleged harassment, the Identification of the person reporting the conduct or condition shall remain confidential.
- H. **Reporting conditions or conduct reasonably believed to be prohibited harassment shall not Adversely affect the reporting citizen or employee.**

19. GRIEVANCE HEARING PROCEDURE

CAVEAT: The purpose of this Grievance Hearing Procedure is to establish a required procedure to resolve applicant and employee grievances, and to thereby enable the county to voluntarily conform the conduct of county officials and county employees to the requirements of county policy. If the applicant or employee does not follow this affirmatively required county grievance procedure, the county will raise waiver and estoppel as affirmative defenses to any claims against the county filed by the applicant via any administrative or judicial procedures otherwise available for redress of grievances.

A. Availability of Property Right Hearings

1. At-will employment may be terminated by either the County or the employee at any time without prior notice, without cause, and without any property right hearing.
2. Any claim that any employee is a permanent employee or that the employee has a constitutionally protected property right in employment, entitling the employee to continued employment until “just cause” for discipline or dismissal is proved by the County at a pre-deprivation hearing, must be timely asserted in writing by the affected employee in accordance with this Grievance Hearing Procedure, or the property right claim will be waived by the employee.

B. Availability of Liberty Right Hearings

1. Any claim of illegal county employment discrimination on the basis of race, color, religion, gender, age national origin, or disability or because the county is acting in a manner that is arbitrary, capricious, or unreasonable, in hiring, compensation, conditions of employment, discipline, or dismissal must be timely made in writing by the affected applicant or employee in accordance with this grievance hearing procedure.
2. Any claim that any employee treatment, discipline, or dismissal is unconstitutional punishment due to the employee’s exercise of a constitutionally protected ‘liberty right’ or other constitutionally protected activity of the employee must be timely made in writing by the affected employee in accordance with this grievance hearing procedure.
3. Any claim that any employee treatment, discipline, or dismissal is contrary to the public policy of Arkansas must be timely made in writing by the affected employee in accordance with this grievance hearing procedure.

C. Availability of Name Clearing Hearings.

Any claim that any employee’s liberty interest in future employment has been damage as a result of any “stigmatizing charge” publicly communicated by the County must be timely asserted by the affected employee in accordance with this grievance hearing procedure.

D. Availability of Hearings Generally:

1. A grievance hearing requested by an applicant or employee is not required to be held unless it is timely requested in the manner required by this Employee Grievance Hearing Procedure and required by the constitution or by this policy.
2. Neither liberty rights nor property rights are created by this document.
3. The County may, in its discretion, hold a hearing prior to any decision or deprivation.

E. Timely Requests for Grievance Hearing

1. It is the applicant’s or employee’s duty to request a grievance hearing.

2. The applicant or employee must timely file a written grievance hearing request after any claimed deprivation of the applicant's liberty or employee's liberty or property, or any right to a hearing or to object to the deprivation shall be waived.
3. The grievance request should state, in writing:
 - a. the grievance for which a hearing is requested;
 - b. the factual basis of the grievance; and
 - c. the relief sought.
4. The written grievance hearing request shall be delivered to the County Grievance Committee in care of the County Judge no later than four-thirty o'clock (4:30) p.m. on the third full business day (weekends and holidays excluded) after any claimed deprivation for which a grievance hearing is requested.
5. Any dismissal decision shall automatically be a suspension with pay for three full business days (weekends and holidays excluded) during which time the employee subject to dismissal may request a pre-deprivation hearing, in which case the suspension with pay shall continue until the conclusion of the County Grievance Committee hearing. (In no event shall a suspension with pay status extend more than 14 days, unless the suspension with pay status is extended by decision of the County Grievance Committee. All accrued but unpaid leave time – e.g., vacation comp. time, etc. – will automatically run concurrent with the period of suspension with pay, unless the employee prevails in his or her grievance. Any discipline decision that will result in reduction or removal of pay or position shall automatically be deferred for three full business days (weekends and holidays excluded) during which time the employee subject to discipline may request a pre-deprivation hearing, in which case the deferral shall continue until the conclusion of the County Grievance Committee hearing.
6. The Grievance Committee shall respond in writing to all timely submitted Grievance Hearing requests stating:
 - a. the time and place of the hearing, if the hearing request is granted, and
 - b. the reason for denial, if the hearing request is denied.

F. Hearing Procedures:

1. NOTICE: After an employee requests a grievance hearing, the employee shall be notified of the date, time, and place of the hearing.
2. SUSPENSION WITH PAY: If it is determined that the grieving employee should continue to work until the hearing is concluded, the employee may be requested to perform duties for the benefit of the County with pay pending the outcome of the hearing.
3. HEARING RECORD: The hearing shall be reported by a court reporter (**not merely a tape recorder**) for transcription upon request by either party at the expense of the requesting party.
4. PROCEDURAL ISSUES: At the hearing, on the record, the parties shall suggest any desired hearing procedures and state any complaints regarding: a) the notice; b) the date, time, or place

of the hearing; c) the opportunity to refute fairly the charges; and d) the impartiality of the decision maker(s).

5. RULES OF PROCEDURE AND EVIDENCE: Informal rules of procedure and evidence (A.C.A. §25-15-208) shall be followed.

- a. witness shall testify under oath;
- b. parties shall be allowed, at their own expense, to obtain and use legal counsel for representation;
- c. parties shall be allowed to obtain and use the presence of witnesses for examination, cross-examination, and rebuttal; and
- d. parties should be granted a reasonable continuance if requested prior to the hearing in writing and if reasonably necessary for stated reasons to prepare adequately for the hearing.

6. PUBLICATION: The County Grievance Committee shall hear the evidence offered by the parties, hear any argument desired by the parties, and vote without public discussion or deliberation. Only the decision and not the factual or legal reasons therefore, shall be announced publicly. The hearing shall be held in public if so required by the F.O.I.A.; however, the employee may, at any time, decline the hearing and accept the intended discipline or dismissal.

7. CONFIRM IN WRITING: After the hearing, the grieving applicant or employee shall be sent a letter stating the factual and legal bases found by the County Grievance Committee for any refusal or removal of pay or position.

G. Hearing Issues and Burdens of Proof:

1. Property Interest Hearings

- a. Since this county employment policy affirmatively creates at-will employment as the default employment policy of the County, the employee has the burden of proving by a preponderance of the evidence that he or she has a property interest in his or her employment.
- b. Where the employee meets his or her burden of proof, the supervisory official has the burden of proving "just cause" for the supervisory official's intended discipline or dismissal of the the employee.

2. Liberty Interest Hearings:

a. Claim of Arbitrary Discrimination (Unequal Treatment)

1. The grieving employee has the burden of proving by a preponderance of the evidence that he or she is being treated differently than another person otherwise, similarly situated with the employee.
2. Where the employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of the evidence that the reason for the difference in treatment is rationally related to the effectuation of a legitimate county objective.

b. Claim of Unconstitutional Punishment

1. The employee has the burden of proving by a preponderance of the evidence that he or she has engaged in constitutionally protected conduct that was a substantial or motivating factor in any adverse employment decision, discipline or dismissal.
 2. Where the employee meets his or her burden of proof, the supervisory official has the burden of proving that the adverse employment decision, discipline, or dismissal would have occurred even in the absence of the constitutionally protected conduct.
- c. Claim of discrimination due to race, color, religion, gender, sex, age, or national origin.
1. The grieving applicant or employee has the burden of proving by a preponderance of the evidence that he or she is being treated or effected differently than another person who, other than for race, color, religion, gender, sex, age, or national origin is similarly situated with the applicant or the employee.
 2. Where the applicant or employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of the evidence that the proven inequality of treatment or effect is necessary to effectuate a compelling county objective.
- d. Claim of Discrimination Due to a Disability
1. The grieving applicant or employee has the burden of proving by a preponderance of the evidence that he or she is a qualified individual with a disability who, because of the disability is being treated or effected differently than another person in regard to job application, procedures, advancement, dismissal, compensation, training, or other terms, conditions, or privileges of employment.
 2. Where the applicant or employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of the evidence that the proven difference in treatment or effect is job-related and necessary to effectuate a legitimate county objective, that performance of the job cannot be accomplished by reasonable accommodation, or that the needed accommodation would result in undue hardship on the county.
 3. Definitions: The following definitions apply to claims of discrimination due to a disability.
 - (a) "Disabled" or "disability"; a physical or mental impairment that substantially limits one or more of the major life activities of an individual; having a record of such an impairment, or being regarded as having such an impairment.
 - (b) "Regarded as having such an impairment"; includes those with conditions such as obesity or cosmetic disfigurement, and individuals perceived to be at high risk of incurring a work related injury.
 - (c) "Discrimination" includes:
 - (1) Limiting, segregating, or classifying a job applicant or employee in a manner that adversely affects his or her opportunities or status;
 - (2) Participating in contractual or other arrangements that have the effect of subjecting

individuals with disabilities to discrimination;

- (3) Using standards, criteria, or methods of administration in such a manner that results in or perpetuates discrimination;
- (4) Imposing or applying tests and other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the test or selection criteria are job-related and consistent with business necessity;
- (5) Failing to make reasonable accommodations for the known limitations of a qualified individual with a disability unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business; or
- (6) Denying employment opportunities because a qualified individual with a disability needs reasonable accommodations.

(d) "Reasonable Accommodation" examples include:

- (1) Making existing facilities used by employees readily accessible to the disabled;
- (2) Job restructuring;
- (3) Flexible or modified work schedules;
- (4) Reassignments to other positions; and
- (5) The acquisition or modifications of equipment or devices.

(e) "Undue hardship": an action requiring "significant difficulty or expense", considering;

- (1) The overall size of the county with respect to the number of employees, number and type of facilities, and size of the budget;
- (2) The type of operation maintained by the county including the composition and structure of the work force of that entity; and
- (3) The nature and cost of the accommodation needed.

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

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

e. Claim of a Completely Arbitrary Decision

1. The grieving employee has the burden of proving by a preponderance of the evidence that the action taken against him or her is not rationally related to the effectuation of a conceivable

legitimate governmental objective of the County.

2. Where the employee meets his or her burden of proof, the supervisory official has the burden of proving by a preponderance of evidence that the action taken against the grieving employee is rationally related to the effectuation of a conceivable legitimate governmental objective of the County.

f. Claim of a Violation of Arkansas Public Policy

1. The grieving employee has the burden of proving by a preponderance of the evidence that he or she is being treated in a manner that violates public policy in Arkansas.
2. Where the employee meets his or her burden of proof, the supervisory official has the burden of proving that the adverse employment decision, discipline, or dismissal would have occurred even in the absence of the violation of public policy in Arkansas.

3. Name Clearing Hearings

- a. The grieving applicant or employee has the burden of alleging that a “stigmatizing charge” has been publically communicated by the county official or county employee and requesting an opportunity to publicly clear his or her name.
- b. Where the applicant employee meets his or her burden of proof, the county shall provide the applicant employee a public hearing opportunity to clear his or her name.

20. COUNTY GRIEVANCE COMMITTEE

- A. The County Grievance Committee for employees hired by the county judge shall be the quorum court, but the decision of the Grievance Committee shall only be advisory to the county judge.
- B. The County Grievance Committee for employees not hired by the county judge shall be the county quorum court (or its appointee), and the decision of the Grievance Committee shall be the decision of the County.
- C. The purpose of the grievance hearing is to enable the county, through its Grievance Committee, to hear from both the employee and the employee’s supervisory official and to thereafter determine whether or not an executive decision of the county official or employee violates the Constitution or the Law. If the decision being challenged in the Grievance Hearing process is determined by the County Grievance Committee to violate the Constitution or the Law, then the County Grievance Committee shall declare the decision to be unconstitutional or illegal and shall direct the supervising elected county official to modify that executive decision to conform that decision to the requirements of the Constitution of the Law.
- D. The County Grievance Committee is not to substitute its operational judgment for that of an elected official if the decision of the county official or employee does not violate the Constitution or the Law.
- E. If the employee’s supervisory official refuses to abide by the County Grievance Committee’s decision, then the County Grievance Committee must either access the courts to seek an order

enjoining the supervisory official from acting contrary to the Constitution or the Law or the County Grievance Committee shall be deemed to have acquiesced to the decision of the supervisory official and the decision of the supervisory official shall become the County's final decision with respect to the employment action taken.

21. RELEASE OF EMPLOYEE GRIEVANCE RECORDS

Public access to employee grievance records is authorized only if approved by the effected employee or authorized by the Arkansas Freedom of Information Act.

22. PUBLIC SAFETY EMPLOYEE DRUG AND ALCOHOL TESTING

A. Public safety employees are subject to testing by the county to detect the presence of controlled substances and alcohol in their body, including:

1. Pre-employment Testing (controlled substances only)
2. Reasonable Suspicion Testing
3. Random Testing
4. Post-accident Testing
5. Return-to-duty and Follow-up Testing.

B. Public safety employees subject to testing shall include only Employees whose duties require them to:

1. Maintain a commercial driver's license or
2. Drive a vehicle as a part of the employee's normal county duties (excluding to and from work) or
3. Carry a firearm or
4. Routinely operate an emergency vehicle (one equipped with siren and red or blue lights) in order to lawfully carry out their duties or
5. Serve as mechanics on county vehicles or
6. Be prepared to use justified physical force against persons to maintain order or secure security for persons detained by the county.

C. The Drug and Alcohol Testing Procedures required by the U.S. Department of Transportation (the Rules) shall be the procedures followed by the county, which procedures shall not be contrary to procedures promulgated by the Association of Arkansas Counties.

D. Upon the county's adoption of this policy, or at the point of hiring, each county employee shall certify in writing that:

1. The employee has been informed of and understands his or her obligations under the County's drug and alcohol testing policy and the drug and alcohol regulation of the U.S. Department of Transportation;
2. The employee understands that the use or possession of alcohol in any form is prohibited in the workplace, and that there are restrictions on alcohol use for a period prior to reporting for work and after an accident;

3. The employee understands that the possession or use of unauthorized or illegal drugs is prohibited at any time whether in the workplace or not;
 4. The employee understands that, as a condition of employment, the employee must submit to collection of breath, urine, blood, and/or saliva samples when requested by the county employer or contractor acting for the county employer and, also that the employee may be subject to drug and alcohol testing in other circumstances including, but not limited to post-accident and when the employer has reasonable suspicion to believe the driver has engaged in prohibited actions concerning controlled substances or alcohol.
- E. Drug and alcohol testing will be administered to the employees in the circumstances and in the manner mandated by the Rules.
- F. Reasonable suspicion testing shall not be conducted until after the facts are reviewed by the prosecuting attorney, a deputy prosecuting attorney, or the county civil attorney and the reviewing attorney agrees with the supervising elected official that reasonable suspicion exists under the particular case.
- G. The following shall result in immediate discharge:
1. Refusal to take a mandated test for drugs or alcohol
 2. A positive drug test result, once the time limit for requesting a second test of a split sample has expired, or upon receipt of a positive drug test result from the second test; or
 3. A positive alcohol test result.
- H. Employees whose initial drug test results are positive and who request a test of the second portion of the split sample will be suspended without pay until such time as the County's 'Designated representative' receives the results of the second (split sample) test. Such second test will be paid by the employer to be reimbursed to the County by the employee. The County shall withhold from the employee's paycheck the cost of the second (split sample) test to reimburse the County. A negative result from the second (split sample) drug test will render the first test invalid and the employee will be reinstated with back pay and reimbursement for the costs of the second test.
- I. An employee suspected of unlawful use of drugs or abuse of alcohol while on duty, as established by the Rules, or who is involved in an accident as defined in 49 CFR 390.5 (and receives a citation for a moving traffic violation in this section) by the Rules, shall be suspended immediately with pay until the results of the drug or alcohol test are received by the county's 'Designated Representative'.

23 SEPARATION

A. Lay-Off:

1. Employees may be laid off either because of a lack of work or funds, or because of a change in the organization of the County's work force. Separation, transfer or demotion due to lay-off does not reflect discredit upon an employee.
2. The procedure for lay-off shall be as follows:

- a. When the need for lay-off is determined, the Quorum Court shall inform the elected officials of the number of jobs which shall be vacated in his/her office.
- b. The elected official shall recommend to the Quorum Court jobs, which he/she thinks should be separated, transferred or demoted because of the lay-off.
- c. After receiving the recommendations, the Quorum Court shall inform the elected official which jobs are to be vacated, separated, transferred or demoted.
- d. The elected official shall consider past service and seniority of employees when making the decisions concerning lay-offs, but is not bound to give precedence to either criterion unless all other qualifications are equal.

B. Retirement

As long as an employee is physically and mentally capable of performing the duties of his/her assigned job, he/she may continue in that job regardless of age. Separation from employment due to retirement shall be handled in the same way as a resignation.

24. MISCELLANEOUS PROVISIONS

A. Outside Employment:

1. Outside employment shall be permitted under the following restrictions with the approval of the employee's elected official:
 - a. Under no circumstances will a person be allowed to work at a job that conflicts with his/her duties of the County.
 - b. Work efficiency of the employee is not decreased by the outside employment. Any employee injured during outside employment may not be eligible for paid sick leave.
 - c. When working off-duty, uniforms shall not be worn unless approved by elected official or supervisor.

B. Political Activity:

County employees shall not be appointed, promoted, retained or dismissed on the basis of their Political beliefs or activities. Employees are expected and encouraged to exercise their rights to vote, and reasonable time off can be granted for this purpose. However, employees shall not engage in any partisan political activity during working hours, or while on duty with the County.

C. Outside Compensation:

Employees for the performance of their duties shall receive no reward, gift or other form of remuneration in addition to regular compensation from any source. If a reward, gift or other form of remuneration is made available to any employee; it shall be credited to a designated

employee fund with approval of the supervisor.

D. Job Safety:

Safety is largely the use of good judgment and the practice of good habits. It takes good judgment to learn the safe way and it takes good habits to continue the safe way. If the employee is not positive that his/her way is the safest, he should ask his supervisor or department head for the correct method.

Some safety rules which all employees must observe are as follows:

- A. Report every accident to your supervisor immediately.
- B. Follow all safety rules of your department/
- C. Use all mechanical safeguards on or for your equipment.
- D. Report any unsafe practices or conditions to your supervisor.
- E. Report any faulty equipment to your supervisor immediately.

