

PERSONNEL MANAGEMENT HANDBOOK  
for  
CONSERVATION DISTRICT DIRECTORS  
and  
DISTRICT MANAGERS



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by the  
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## Preface

Soil and Water Conservation District directors and employees have asked for an employer handbook that focuses on major personnel issues, highlights Oregon's specific rules and regulations, and is easy to use. This handbook has been developed to help fulfill that need. Obviously not all personnel issues are addressed, and not all issues are discussed in depth.

This handbook is NOT an employee handbook NOR a collection of model personnel policies. It is a "think book" to give background and directions on which directors and managers can write personnel policies that fit their unique needs. In a few places, suggested wording for policies are provided, and some of the text can be easily converted to policy.

Every effort has been made to make this handbook as useful as possible. This reference is a very basic resource for you as an employer. References and samples are provided to help you be more effective employers, comply with current laws, and provide a mutually beneficial working environment. Specific details and questions not answered in this handbook may be answered by some of the listed resources.

This handbook is available on the ODA website [[www.oregon.gov/ODA/](http://www.oregon.gov/ODA/)], where it will be updated as needed. Many examples can be easily downloaded, customized, and used by your district. Only a few of the forms are the authoritative, official forms. Most are examples that can be tailored to your preferences and needs as long as they retain the required items or wording.

**VERY IMPORTANT NOTE: This handbook is not legal advice. It has not been prepared by a professional employee attorney. However, its contents have been reviewed in selected areas by two employee attorneys and the overall contents have been reviewed and edited by a business specializing in Human Resources Services. All individuals consulted were referred to OACD by the Special Districts Association of Oregon.**

**Repeat: THIS HANDBOOK IS NOT LEGAL ADVICE. Please consult your own counsel or personnel management professional for specific questions.**

John McDonald is the primary author, using materials from many sources, [most are listed in the Bibliography] and consultation from the Special Districts Association of Oregon, Oregon Department of Agriculture, Bureau of Labor and Industries, a human resources consulting firm, and two attorney firms which specialize in personnel law.

Thanks go to many individuals who took the time to advise me, share materials, answer questions, read and review the many drafts. But the most thanks goes to Ginger, without whom I could never have completed this handbook, or better yet, would never have even started.

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Oregon’s soil and water conservation districts are local governments, and district directors are public officials. By virtue of those two facts, conservation districts are legally and ethically responsible to administer their programs and deliver their services effectively, efficiently, and economically. Central to their ability to do so is the quality of their personnel management systems.

District directors are responsible and accountable to ensure employees are competent and productive. They are also legally liable to ensure employees are treated fairly and equitably. Therefore, it is vital district directors take an active role to formulate and administer personnel policies and management practices. This handbook attempts to help them do so.

## ***District Responsibilities***

The responsibilities for personnel management lie primarily with the district directors. Those listed below should not be delegated to others, although directors might seek the advice and assistance of their employees, personnel professionals, other districts, and agencies and organizations like those listed on pages 8-9 of this chapter. District directors should:

- ❑ Develop and operate a personnel management system.
- ❑ Approve and administer written personnel policies that are comprehensive, comply with applicable laws, and reflect current personnel practice and case law.
- ❑ Conduct job performance evaluations of the designated “CEE -- chief executive employee” [district manager or whatever title is used].
- ❑ Ensure all other employees are regularly evaluated by their respective supervisors.
- ❑ Provide training for board members and employees on personnel policies and management practices.
- ❑ Ensure employees are well-trained, demonstrate high competence in their respective jobs, and work well together as a team.
- ❑ Provide physical and financial resources, working conditions, and an environment to assist employees and the district to be successful.
- ❑ Maintain complete, written records documenting all pertinent policies, personnel actions, and management decisions.

## ***Legal Responsibilities of an Employer***

Conservation districts are subject to the legal responsibilities of being “employers”. The following are the major legal responsibilities. Districts must also clearly differentiate between their responsibilities for “employees” and the relationship and responsibilities toward “independent contractors”. Independent contractors are not employees and come under a different set of laws and policies. Chapter 3 explores the differences in greater depth.

## 1. Register as an Employer

Oregon employers are required to register with the State of Oregon prior to hiring any employee. Oregon Department of Revenue's *Combined Employer's Registration Form 150-211-055* is used for this purpose. The Department will issue a Business Identification Number [BIN] in a letter titled "Notice of Registration". A copy of the form and the letter are to be maintained in the district's official files.

**NOTE.** Each district must have their Combined Employer's Registration Form 150-211-055 and Notice of Registration on file.

## 2. Forms to be filled out by Employees or Independent Contractors

- W-4 – Employee's Withholding Allowance Certificate, IRS
- W-5 – Earned Income Credit Advance Payment Certificate [annually if person qualifies]
- I-9 – Employment Eligibility Verification Form, U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services
- Employee Information Sheet
- New Hire Reporting Form – mail or fax to the Oregon Department of Justice
- W-9 – Request for Taxpayer Identification Number and Certification from all independent contractors. This is the only form necessary for independent contractors and is not used for employees.

## 3. State Withholding Tax

All Oregon employers must withhold state taxes from an employee's wages, each time the employee is paid. For most Oregon employers, due dates for paying state withholding taxes are the same as the due dates for making federal tax withholding and Social Security and Medicare tax deposits. All Oregon employers must file withholding tax returns in addition to making the required payments.

The Oregon Department of Revenue publication, *Oregon Withholding Tax Tables* (150-206-430) provides information on the rates of tax withholding for employers.

Once an employer is registered, it must file an Oregon Quarterly Combined Tax Report form, even if it does not have a payroll during a quarter. The Oregon Quarterly Combined Tax Report form combines the reporting requirements for the State Withholding Tax, the Unemployment Tax [#5 below], local taxes [#6 below], and Workers' Compensation Benefit Fund Assessment [#7 below].

#### **4. Federal Payroll Taxes**

All employers must obtain a federal Employee Identification Number (EIN) by completing and submitting Internal Revenue Service (IRS) Form SS-4, *Application for Employer Identification Number*. IRS will send a notice with your nine-digit employer number.

Employers are required to withhold federal income, Medicare, and Social Security taxes [deducted monthly]. In addition, the district pays matching Medicare and Social Security taxes at the same time. Districts must file Form 941 quarterly, Employer's Quarterly Federal Tax Return.

IRS's Publication 15 [Circular E, Employer's Tax Guide] provides payroll reporting guidelines as well as withholding rates and tables. This publication is normally mailed to all registered employers annually.

#### **5. Unemployment Tax**

Employers are required to pay state unemployment insurance [i.e., UI - state Unemployment Insurance] and report it on their Oregon Quarterly Combined Tax Report form. Oregon employers will receive a notice each year of its assigned rate. Districts are exempt from having to pay Federal Unemployment Tax Assessment [FUTA].

The entire cost of unemployment insurance in Oregon is supported by employers. For the purpose of unemployment taxes and benefits, conservation districts are considered **political subdivision employers**, and, as such, have three tax reporting options available to them. For more information regarding these issues, districts should contact either the Oregon Department of Revenue or the Oregon Employment Division.

#### **6. Local and Transit Taxes**

Depending on its location, the district may be required to withhold and/or pay other taxes: for example, Tri-Met or Lane County.

#### **7. Worker's Compensation Benefit Fund Assessment and Insurance**

All Oregon employers are subject to the Oregon Workers' Compensation Law. Employers pay for the insurance premium. In addition, a "cents-per-hour" assessment must be paid for employees' hours worked. This cost may be split with employees [no more than half]. An employer must obtain Workers' Compensation Insurance before hiring any employee. An employer may purchase this insurance from a commercial company or from the State Accident Insurance Fund [SAIF].

## **8. Year-End Tax Reporting Responsibilities**

Employers are required to file year-end reports with state and federal authorities. These forms include:

- W-2s – to each employee.
- W-3 [summary of all W2s and all original W2s] to the Social Security Administration.
- WR – to the Oregon Department of Revenue.
- 1099s – to all contractors, vendors, and others [who are not incorporated and not treated as employees] paid by the district beyond the minimum dollar amount established by IRS.
- 1096 [summary of 1099s and all original 1099 forms] to IRS.

Districts should contact the IRS and the Oregon Department of Revenue for more information regarding requirements and to obtain copies of these forms.

## **9. Required Postings for Employers**

- State Minimum Wage
- Oregon Family Leave [if 25 or more employees]
- Oregon – OSHA Job Safety and Health [“It’s the Law”]
- Workers’ Compensation Notice of Compliance
- Employment Insurance Notice
- Oregon’s Smokefree Workplace
- Federal Minimum Wage
- Polygraph Protection Act Notice
- Family and Medical Leave Act [regardless of number of employees]
- EEOC’s “The Law” Poster [15 or more employees, but post it anyway]
- Uniformed Services Employment and Reemployment Rights Act [USERRA]

### ***Purposes of Written Policies***

Numerous personnel management problems can be avoided or greatly minimized if each district establishes written personnel policies. Where district employees are governed by the rules and regulations of other jurisdictions, copies of those regulations should be secured for the employees and become addenda to the policy manual.

Directors must be familiar with personnel matters and maintain a thorough set of district personnel policies, including forms, to reduce the district’s liability risk and to provide a framework for effective personnel management. Policies should be reviewed regularly for compliance with current laws, regulations, and practices. Policies protect both the employee and the employer.

Written personnel policies achieve significant purposes, among which are they:

- A. Provide a general framework for effective personnel administration.
- B. Establish roles and responsibilities of the board of directors, personnel committee, individual directors having delegated duties, supervisors, and employees.
- C. Identify employees' rights, privileges, responsibilities, and benefits.
- D. Identify the responsibilities of employees toward the district.
- E. Inform everyone of the working guidelines for supervisors and employees in the day-to-day administration of the district.
- F. Ensure consistent, fair, and uniform treatment of district employees.
- G. Ensure policies and practices comply with all applicable laws.

### ***Qualities of Effective Personnel Policies***

The district board should ensure their policies have at least the following qualities.

- A. The policies are thorough and complete, covering all likely scenarios and questions. **Remember – “policies” are**
  - **answers to questions before they are asked,**
  - **solutions to situations before they arise,**
  - **defined sets of procedures to follow – before they are needed, and**
  - **the “rules of the game” and who must follow them.**

So it might help to anticipate issues, questions, situations, complaints, etc. that might arise and write policies [answers, solutions, procedures, rules] on those items in advance.
- B. Policy language needs to be clear, succinct, and understandable: putting legal issues into language all directors and employees can understand and will lead to the same interpretations.
- C. Policies must be fair and equitable – both ways.
- D. They should be consistent and integrated throughout all functions. The only exceptions must be provided for in statute or rule, such as the right to provide different benefits to different classifications of employees.
- E. Policies must be legal and current with the latest regulations and personnel practices.
- F. They should define procedures, records, and reports that are easily maintained, readily accessible according to rules, and easily located during discussions and decision making.

- G. They must provide for privacy, security, and confidentiality when required by law or as prudent. Policies must clearly delineate the criteria and procedures for access to personnel records.
- H. They should be flexible to accommodate differences in individuals, jobs, and expectations, without discrimination or showing “favoritism.”
- I. Their tone should be
  - business-like, objective, and technical;
  - welcoming, positive, and motivating;
  - while avoiding giving any impression of negativity, aggressiveness, or punitiveness.

District policies might include the following two statements.

“The district reserves the right to change these policies and procedures at any time. These policies and procedures do not and are not intended to confer any property right in continued employment or to constitute an expressed or implied contract.”

“Except as might be noted in writing by the board, no employee or representative of the district may enter into an agreement for employment for any specified period of time or make any agreement contrary to board-approved policies.”

### ***Administration of Personnel Policies***

Policies are under the direct control of the board of directors. The board is responsible for all matters dealing with personnel through adoption and implementation of policies, the district budget, salary plans, and official actions to adopt or amend the personnel rules and regulations. Only the board has the authority to make, delete, or amend personnel policies.

Each employee can assist to keep the district personnel system up-to-date. When new or revised policies are needed, a recommendation may be submitted to the personnel committee.

The board may specifically delegate in writing to an individual or committee the authority to enforce personnel policies, carry out specific policies, or perform personnel duties.

Regular personnel administration should be the responsibility of the personnel committee, consisting of two or more directors appointed by the chair and approved by the board.

### ***Duties of the Personnel Committee***

The board should appoint a personnel committee and charge it with at least the following specific duties.

- A. Develop and maintain the personnel policies, under guidance from and actions by the board when necessary.
- B. Review these policies annually and recommend amendments to the board as needed.
- C. Interpret policies to employees as questions arise. The board may grant authority to the personnel committee to temporarily modify district personnel policy if it is found the strict application of the policy is impractical or would result in hardship [as long as it does not violate other provisions, such as non-discrimination]. Exceptions granted in such instances would not be binding after the temporary situation ended.
- D. Ensure the effective implementation of these rules and regulations. The board delegates to the personnel committee broad discretion in all aspects of personnel relations, subject to the advice and concurrence of the board.
- E. Develop job descriptions or ensure job descriptions are developed by employees with management and supervisory responsibilities.
- F. Review all job descriptions annually.
- G. Oversee recruitment and selection processes. Interview job applicants and make employment recommendations to the board, unless such authority has been delegated to a supervisor or district manager.
- H. Recommend salary levels for employees to the finance committee.
- I. Conduct employee performance reviews annually, except as assigned to supervisors.
- J. If requested, participate in and/or consult on personnel matters with the supervisors regarding individual employees [such as participating in administrative reviews and consulting on possible disciplinary actions].
- K. The personnel committee shall ensure forms are created and used to carry out the policies and to maintain required records.
- L. All employees' personnel files and records shall be kept in a locked, fire-resistant file cabinet in the district offices or other suitable location designated by the board. Employee's regular personnel files and medical files must be kept separate.

### ***Where to Go for Help***

District directors will face a variety of questions, problems, and situations in personnel management for which there are no simple answers. When developing or revising personnel policies and procedures, districts might contact the following agencies for guidance. The Mutual Agreement and the Cooperative Working Agreement between the district and NRCS in each office may also be useful.

Bureau of Labor and Industries  
<http://www.boli.state.or.us>

Portland:	800 NE Oregon St., #32 Suite 1070 Portland, OR 97232 Phone: (503) 731-4200	Bend:	2480 NE Twin Knolls Dr. Bend, OR 97701 Phone: (541) 322-2435
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Eugene:	1400 Executive Pkwy Suite 200 Eugene, OR 97401 Phone: (541) 686-7623	Pendleton:	1327 SE 3 <sup>rd</sup> St. Room 110 P.O. Box 459 Pendleton, OR 97801 Phone: (541) 276-7884
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Medford:	700 E. Main Suite 105 Medford, OR 97501 (541) 776-6270	Salem:	3865 Wolverine Ave., NE Building E Suite 1 Salem, OR 97305-1268 Phone: (503) 378-3292
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Oregon Department of Agriculture  
Natural Resources Division  
635 Capitol Street, NE  
Salem, OR 97301  
Phone: (503) 986-4775  
<http://www.oregon.gov/ODA>

Oregon Employment Division  
875 Union Street, NE  
Salem, OR 97311  
Phone: (800) 237-3710  
<http://www.employment.oregon.gov/>

Special Districts Association of  
Oregon  
Special Districts Center  
727 Center St., N.E.  
Suite 208  
Salem, Oregon 97301  
Phone: (503) 371-8667  
<http://www.sdao.com>

Oregon Association of Conservation  
Districts  
3867 Wolverine St, NE, Suite 16  
Salem 97305-4267  
Phone: (503) 566-9157  
<http://www.oacd.org>

### ***Other Resources***

Oregon Department of Administrative Services – [www.oregon.gov/DAS/index.shtml](http://www.oregon.gov/DAS/index.shtml)

Oregon Department of Public Health – substance abuse treatment;  
[www.dhs.state.or.us/publichealth](http://www.dhs.state.or.us/publichealth)

Oregon Department of Public Safety, Division of Criminal Investigation – criminal  
history records.

Oregon State Police – Identification Services Section. Can provide finger print based criminal background check for Oregon employers. Get application from [www.oregon.gov/OSP/ID/clearinghouse.shtml](http://www.oregon.gov/OSP/ID/clearinghouse.shtml). Fee may be charged.

Oregon Department of Revenue – for state withholding questions and forms, make direct deposits; information on local and transit taxes required in some cities or regions; <http://www.oregon.gov/DOR/>.

Oregon Department of Transportation, Division of Motor Vehicles [DMV] – check on validity of driver’s license and driving record for the past three years, if eligible to request such information. <http://www.oregon.gov/ODOT/DMV/records/index.shtml>.

Oregon Public Employees Retirement System (PERS) – retirement, rates, termination of employment, etc. – [www.oregon.gov/PERS/index.shtml](http://www.oregon.gov/PERS/index.shtml).

Oregon –Occupational Safety and Health Administration [OR-OSHA] has offices across the state. Call 800-972-2689 for general information of local offices. [www.cbs.state.or.us/external/osha/contactus.html](http://www.cbs.state.or.us/external/osha/contactus.html).

Internal Revenue Service – for federal withholding questions and forms; direct deposit, information on “employee vs. independent contractor”; [www.irs.gov](http://www.irs.gov) . For forms use [www.irs.ustreas.gov](http://www.irs.ustreas.gov).

Social Security Administration – look up whether an employee social security number is legitimate [after hiring]; 800-772-1213 or [www.ssa.gov](http://www.ssa.gov).

US Department of Homeland Security, U.S. Citizenship and Immigration Services – employment eligibility [Form I-9]; <http://www.uscis.gov/i-9>

US Equal Employment Opportunity Commission; 800-872-3363 or [www.eeoc.gov](http://www.eeoc.gov)

## Chapter 2 – Legal Restrictions, Obligations, and Liabilities

This section deals with selected critical issues and important understandings about personnel management and personnel policies.

### ***“At-Will” Employment Status***

Oregon is an “at-will employment” state. This means an employer can terminate an employee at any time and for any reason or for no reason at all. The employee is also free to leave employment at any time and for any reason.

However easy that is to say, it is not as easy as it sounds. Laws and court cases have placed major restrictions on an employer’s right to terminate employees or to treat some employees differently from others. State and federal laws prohibit discrimination against employees. The district may be liable in court for employment actions that violate public policy.

Oregon employees are presumed to be “at-will” employees unless that status has been changed by contract provisions, personnel policies, or oral promises which convert the employee’s job into a “property right.”

- If “at-will” status is altered, the employee may be terminated only for good cause and must be afforded “due process”.
- Where due process is required, employees are entitled to notice of charges, a pre-termination hearing, and a post-termination hearing.
- Districts should assure the “at-will” employment status is preserved.

**At-will status is not a substitute or excuse to ignore good management practices.** Certain actions help preserve at-will employment.

- Establish clear personnel policies.
- Ensure all employees understand and agree to abide by these policies.
- Counsel, mentor, and discipline employees who fail to meet job performance expectations.
- Keep thorough records of job performance to document your district’s actions are legitimate and based only on unacceptable job performance, not discriminatory actions.
- Apply practices and policies consistently and equitably.

At-will employers may still be required to defend their actions in court or before federal and state agencies, so it is prudent for districts to have records documenting legitimate business reasons for any important personnel actions.

While it is important the district retain at-will employment status, your biggest concern is to not defeat [void, negate, override] this status. In writing and applying policies, the district must take care not to inadvertently violate employment and discrimination laws or to place unnecessary restrictions on themselves, and thus “void” the at-will status.

A simple statement declaring to be an at-will employer is not sufficient. Three other practices are critical.

- ❑ Personnel policies, position announcements, job descriptions, job offers, and other documents defining personnel policies or employment relationships need to be consistent. They should not make any promises, define any procedures, or obligate the district to anything that negates at-will status.
- ❑ Don't use words like “permanent” in policies, job descriptions, job offers, or anyplace else. You do not want to promise anyone a “permanent, full-time” position. Use the term “regular” instead.
- ❑ Directors, managers, and supervisors must be very careful not to make verbal offers, promises, or encouraging statements that could be understood as a “contract.” [See further explanation later in this section.]

The policies most likely to void the at-will status are disciplinary procedures: promising a progressive sequence of actions from verbal warnings, to written warnings, to suspensions, or other actions prior to termination. Do not define specific “punishments” for particular behaviors. These practices used to be recommended so employees would know what to expect, but the courts have considered them contractual agreements for the employer to perform at each and every step.

Policies should state at the very beginning they are not a contract, the district reserves its right to employ at-will, and both the district and employee can terminate the employment relationship at any time for any reason. Also state the policies are meant to be general guidelines only, and the district has the right to deviate from them at its discretion and the right to make changes to policies from time to time.

**The key message about being an at-will employer should be in bold typeface and larger font than the rest of the text.**

For example, the text might read:

**“The \_\_\_\_\_ Soil and Water Conservation District reserves the right to employ at-will. That means both the district and the employee can terminate the employment relationship with or without cause and with or without notice.** This policy is neither a contract nor a guarantee of continued employment, but will be used by the district only as a guideline. The district reserves the right to deviate from this policy and use its discretion to make all employment decisions. Changes will be effective on dates determined by the district, and employees cannot rely on policies that have been superseded. No supervisor or

manager has the authority to alter these policies. All changes must be approved by the board and provided to all employees in writing.”

Once you have defined your at-will status policy, reference the policy in other places.

- Position announcements.
- Job application forms.
- Written job offers.
- Job descriptions.
- The signature page the new employee signs when receiving the personnel policies manual.
- In key sections of the manual describing specifics such as benefits, discipline, and leaves.

### ***Employment Discrimination Laws in General***

Numerous and sometimes difficult and confusing legal provisions and interpretations have been made. Protected classifications exist under both state and federal law. The issues are not only difficult to define but require informed diligence to comply with them all. Discriminating against an employee who belongs to one of these “protected classes” is usually a violation of law.

Most of us are aware of the traditional equal rights based on one’s race, age, gender, color, disability, or religion, but state and federal laws cover a host of other protected classes and protected activities. See the Bureau of Labor and Industries’ [Civil Rights Handbook](#) for information and direction. [See following page.]

State and federal laws prohibiting employment discrimination apply to hiring decisions. Consequently, managers and supervisors involved in hiring decisions should be familiar with the types of discrimination prohibited under the law.

The principal statutes restricting employer rights include those discussed below.

#### **Title VII of the Civil Rights Act of 1964**

Title VII prohibits employers from refusing to hire or otherwise discriminate against employees on the basis of gender, race, color, national origin, and religion.

#### **Oregon’s Fair Employment Practice Laws**

A number of protected classes recognized under Oregon state law are more expansive than those recognized under Title VII of the Civil Rights Act of 1964. Under these laws, employers are prohibited from discriminating against applicants on the basis of protected status or protected activities. The two columns below are simply lists under each heading. No relationship exists between the columns.

Protected Status	Protected Activities
▪ Race / Color	▪ Use of Workers' Compensation
▪ Religion	▪ Retaliation for opposing unlawful employment practices or participating in employment proceedings
▪ Gender	▪ Use of family and medical leave
▪ Sexual orientation	▪ Opposition to safety and health hazards
▪ National origin	▪ Whistle blowing
▪ Citizenship	▪ Military duty
▪ Marital status	▪ Association with a person of a particular race, religion, gender, etc.
▪ Age – 18 and older	▪ Union activity
▪ Pregnancy	▪ Garnishment
▪ Family relationship	▪ Use of other employment rights [wage and hour, unemployment, etc]
▪ Veteran status	▪ Refusal to take polygraph, psychological stress, or blood/breathalyzer test to detect alcohol
▪ Expunged juvenile record	▪ Use of lawful tobacco products on off-duty hours
▪ Being a smoker	▪ Leave to serve in the legislature

### **Other Federal Discrimination Laws**

- Equal Pay Act of 1963. Prohibits different rates of pay based on gender.
- Age Discrimination in Employment Act of 1967 (ADEA). Prohibits discrimination on the basis of age for people 40 and over, with some exceptions.
- Rehabilitation Act of 1973 (§503). Requires affirmative action in employment for disabled people.
- Rehabilitation Act of 1973 (§504). Prohibits discrimination on the basis of a disability.
- Vietnam Era Veterans Readjustment Act of 1974. Requires affirmative action in employment for Vietnam veterans and disabled veterans.
- Executive Order 11246 as amended. Requires affirmative action in employment for women and minorities.
- Immigration Reform and Control Act of 1986. Requires employers to complete an employment eligibility verification form on anyone hired after November 6, 1986.
- Americans with Disability Act of 1990. Prohibits discrimination against qualified individuals with a disability in hiring, firing, compensation, advancement, training, and other terms, conditions, and privileges of employment.

## **Oregon Discrimination Laws [Unlawful Employment Practices]**

- ORS 659.030. It is unlawful for a public employer to refuse to hire, or to fire, or to discriminate against an individual in compensation, terms, conditions or privileges of employment based on that individual's race; color; religion; gender; national origin; marital status; age (where individual is 18 years or older); expunged juvenile record; association with anyone of a particular race, color, gender, national origin, marital status, age, religion, or family relationship; and opposition to safety and health hazards.
- Oregon law prohibits a public employer from discriminating against an individual because of his or her mental or physical disability, and application for workers' compensation benefits.
- Oregon law also prohibits a public employer from refusing to grant an employee's request for a parental leave of absence or refusal to allow a female employee affected by pregnancy, childbirth, or related medical conditions or occurrences to transfer to a less strenuous or hazardous position or take a leave of absence.
- It is unlawful for any person, whether employer or employee, to aid, abet, incite, compel, or coerce an employer to violate the provisions of Oregon civil rights law (ORS 659.030).
- It is unlawful for an employer to fire, expel, or otherwise discriminate against anyone because he or she has opposed practices forbidden by civil rights law, or has filed a complaint or testified about a possible violation of the law (ORS 649.030).

Some cities even have ordinances protecting sexual orientation or source of income [Albany and Corvallis respectively].

As an equal opportunity employer, district directors must give all interested persons who qualify an opportunity to apply for any regular [not temporary] positions offered by the district. To insure this happens, the district should advertise any position opening(s) it has, provide the necessary information to the local Employment Office, recruit potential employees, conduct an interview process, and select the person(s) for the position(s) available. In doing so, the district must insure it does not violate ORS 659.030, which states "it is an unlawful employment practice for an employer, because of an individual's race, religion, color, gender, national origin, marital status or age, if the individual is 18 years of age or older, to refuse to hire or employ or to bar or discharge from employment such individual."

Districts should develop policies addressing discrimination against consumers and against employees based on hiring practices, review, promotional practices, etc.

## ***Americans with Disabilities Act***

The Americans with Disabilities Act [ADA] prohibits discrimination against disabled persons in the areas of employment, public accommodation, and public services. Title I of the Americans with Disabilities Act deals with private employment and prohibits discrimination against "any qualified individual with a disability" in all aspects of employment. Title III of the Americans with Disabilities Act requires public accommodations to make facilities and services accessible to the disabled. For more information, contact the Bureau of Labor and Industries, (503) 731-4073. The ADA prohibits an employer from refusing to hire or otherwise discriminate against a "qualified individual with a disability." A qualified individual with a disability is one who, with or without reasonable accommodation, can perform the essential functions of the job.

### **What is a "Disability?"**

The definition of "disability" in the American Disabilities Act is modeled after the three-prong definition contained in the Vocational Rehabilitation Act of 1973. A disabled individual is one who:

- Has a physical or mental impairment that substantially limits a major life activity;
- Has a record of such an impairment; or,
- Is regarded as having an impairment, even though it really does not exist.

**"Major life activities"** include functions such as caring for oneself, performing a manual task, walking, seeing, hearing, speaking, breathing, learning, and working. 29 CFR 1630.2(i).

The term **"substantially limits"** means a person is unable to perform a major life activity the average person in the general population can perform **or** is significantly restricted as to the condition, manner, or duration under which (s)he can perform the major life activity compared to the average person in the general population. In situations where the physical or mental impairment concerns the person's **ability to work**, "substantially limits" means:

The person is significantly restricted in his/her ability to perform either a class of jobs or a broad range of jobs as compared to the average person having comparable training, skills, and abilities. The inability to perform a single or particular job does not qualify the person as someone who is entitled to protection under the ADA

### **Who is a "Qualified Individual with a Disability"?**

A **"qualified individual with a disability"** is one who:

- Satisfies the requisite skill, experience, education, and other job-related requirements of the position;
- With or without reasonable accommodation, can perform the essential functions of the job; **and**

- Without a direct threat to the safety/health of himself/herself or another.

**Essential functions** must be limited to the fundamental duties of the job. A disabled applicant's inability to perform marginal functions cannot be used as a basis for denying an employment opportunity. Because the ADA envisions a case-by-case analysis of individual applicants, the Equal Employment Opportunities Commission [EEOC] regulations defining "essential functions" are frustratingly, but necessarily, vague. Under the regulations, evidence of whether a particular function is essential may include, but is not limited to:

- The employer's judgment as to which functions are essential.
- Written job descriptions prepared *before* advertising or interviewing applicants.
- The amount of time spent on the job performing the function.
- The consequences of not requiring the function to be performed.
- The terms of a collective bargaining agreement.
- The work experience of past and current employees who have performed the job.

It should also be noted EEOC regulations prohibit an employer from asking any pre-employment questions regarding an applicant's physical or mental limitations, even questions regarding whether the applicant has any limitations that could affect his/her ability to perform the job(s) applied for. See the detailed section explaining ADA Restrictions on the Hiring Process [page 9]. Job descriptions can be used to outline the essential functions of the job and ensure consistent identification of those functions.

Job descriptions are considered primary evidence of an employer's intent vis-à-vis the "essential functions" of a job. Therefore, the ADA places new importance on the development of well-written and factually accurate job descriptions which address the physical demands of particular jobs.

The ADA also incorporates a provision stating that an individual who poses a direct threat to the safety or health of others<sup>1</sup> is not qualified for the job. Under EEOC regulations a direct threat must be based on the individual's **current** ability to safely perform the essential functions of the job. The assessment must also be based on a reasonable medical judgment relying on the "most current medical knowledge and/or the best available objective evidence". The factors to be considered include the duration of the risk, the nature and severity of the potential harm, and the likelihood the harm will occur.

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<sup>1</sup> The EEOC has expanded this provision to include a direct threat to the employee's own safety. The U.S. Supreme Court has sanctioned this interpretation. **Echazabel v. Chevron, 122 S. Ct. 45 (2002)**.

## **What does “Reasonable Accommodation” Require?**

Reasonable accommodation is defined as accommodation which does not impose an “**undue burden**” on the employer. The phrase “undue hardship” has been statutorily defined to mean an action requiring “**significant difficulty or expense.**” There are no definitive standards to determine what constitutes a “significant difficulty or expense”. An employer is required to reasonably accommodate only the known physical or mental limitations of an otherwise qualified applicant with a disability. It is generally the responsibility of an individual to inform the employer that accommodation is needed.

Reasonable accommodation must be made in the application, testing, and hiring processes, as well as post-employment. It is clear, however, the individual must be “**otherwise qualified**” for the job in order to be entitled to reasonable accommodation.

**The duty to reasonably accommodate does not compel an employer to hire a disabled person in preference over a more qualified applicant/employee.** The reasonable accommodation obligation is intended to place disabled applicants on equal ground to compete for jobs on the basis of their skills, qualifications, and experience. Also, applicants are not entitled to the “best” accommodation possible. As long as the employer’s accommodation enables the disabled person to fulfill job duties, the employer has satisfied its obligation.

In the event an applicant does qualify as “disabled,” the employer must engage in an “interactive process” with that applicant in order to satisfy the obligation to reasonably accommodate. When a disabled applicant requests reasonable accommodation, an employer must engage in an “**interactive process**” with that person to:

- Analyze job functions to establish essential and non-essential job tasks.
- Identify barriers to job performance.
- Learn precise limitations.
- Identify the types of effective accommodations.

Although efforts to reasonably accommodate must begin with the interactive process to determine whether the applicant can, through reasonable accommodation, be enabled to perform the job for which (s)he applied, employers should consider disabled applicants who cannot, with or without reasonable accommodation, perform that job for other available and suitable jobs. An employer’s reasonable accommodation obligations are evaluated on a case-by-case basis with consideration to the following factors:

- The size, type, and financial resources of the specific facility where the accommodation would have to be made.
- The size, type, and financial resources of the employer.

- The nature and cost of the accommodation.
- The nature of the employer's operation, including the composition, structure, and functions of its workforce and the geographical separateness and administrative and fiscal relationship between the specific facility involved and the covered employer in general.

Employers are required only to provide job-related accommodations; i.e., accommodations specifically designed to assist the applicant or employee to perform job duties. Employers are not required to make accommodations to assist a disabled person in his/her daily activities. For example, an employer would not be required to purchase a prosthetic device not necessary to enable the disabled person to perform essential job functions.

### ***ADA Restrictions on the Hiring Process***

The ADA imposes significant restrictions on an employer's right to require applicants for employment to answer questions related to their medical condition. Likewise, the ADA imposes significant restrictions on an employer's right to conduct pre-employment physical examinations or inquiries.

#### **The Pre-Offer Stage**

Under the ADA it is unlawful for an employer to ask an applicant during the pre-offer stage if (s)he has a physical or mental limitation that could affect his/her ability to perform the duties of the job before a job offer has been made. Instead, during this time period employers can ask only: "Can you perform the essential functions of the job(s) you are applying for?" If the applicant discloses that (s)he has physical or mental limitations that could affect his/her ability to perform the functions of the job **or** you become aware of such a limitation through direct observation or other sources (for example, an applicant seeking a physically demanding job comes to the interview in a wheelchair), you may ask "how" (s)he will perform those functions. You may also have the applicant *demonstrate* how (s)he will perform those functions.

Also, all facilities where employment applications are received must be fully accessible to applicants with disabilities.

#### **Post-Offer/Pre-Work Medical Inquiries**

The ADA permits employers to conduct pre-employment medical examinations of applicants only if all of the following requirements are satisfied:

- Information obtained through a medical examination must not be used to screen out a disabled person, unless the exclusionary criteria is job-related, consistent with business necessity, and the performance of the essential job functions cannot be accomplished with reasonable accommodation.
- Medical examinations may be required only after an employment offer has been made to the applicant and before the applicant begins his/her job duties.

- An offer of employment may be conditioned on the results of the examination only if all entering employees for the same job category are subject to the examination and the information obtained is kept in separate and confidential medical files and maintained confidentially.

Under federal and state law, employers are not required to conduct pre-employment drug screens after offering a job to a candidate, but before (s)he starts work. However, drug testing laboratories generally ask applicants who are undergoing testing to identify medication(s) they are taking. Consequently, inasmuch as the divulging of such medications constitutes a medical inquiry, employers are best advised to conduct drug screening post-offer/pre-work.<sup>2</sup> See Exhibit 5.15.

### ***Fair Credit Reporting Act***

Employers who utilize “consumer reporting agencies” to provide “consumer reports” on applicants are required to comply with the Fair Credit Reporting Act [FCRA].

A “**consumer report**” includes any personal information obtained from a “consumer reporting agency” regarding an applicant for employment. For example, it includes information about a person’s criminal history, driving record, employment history, employment references, credit history and personal references, personality, general characteristics, or reputation.

A “**consumer reporting agency**” is a person or company that regularly investigates and provides information about individuals at our request, in exchange for a fee.

Before requesting a “consumer report,” including a criminal history or driving record on an applicant from a consumer reporting agency, an employer (“user”) must provide the applicant with a Disclosure and Consent form [Exhibit 5.4], a “Summary of Your Rights Under the Fair Credit Reporting Act” statement, and obtain his/her signature. The form and statement can be provided to the applicant at the same time (s)he is given an employment application.

Second, before an applicant is denied employment, e.g., suffers an “adverse action”, based on a consumer report, (s)he must be issued a copy of the report, along with a “Summary of your Rights under the Fair Credit Reporting Act”, if not already provided.

Finally, at the time an applicant is denied employment based on a consumer report, (s)he must be issued a Notice of Adverse Action form.

The best options for districts are three:

1. Include language in your policies indicating the district reserves the right to conduct investigative and consumer background checks on employees when

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<sup>2</sup> Districts are encouraged to seek the advice of employment law counsel regarding constitutional limitations on pre-employment drug screening.

their job classification and job responsibilities warrant a background check. For example, for individuals handling money [making deposits, writing checks, etc.] and making decisions regarding spending, a criminal background check and credit check might give greater confidence in hiring decisions. Annual credit checks are used by many employers for those responsible for funds as a routine business practice.

2. If you choose to do background checks yourself, obtain the correct materials to provide the applicant, such as the “Summary of Your Rights under the Fair Credit Reporting Act” and an “Employee Information Sheet”. The Information Sheet will collect the necessary data from the applicant to do the checks and also provides a signature line for authorization.
3. Hire a firm to do background checks. Such firms can do all the required checks, will supply the required forms and other paper work to the applicant or employee, conduct the checks, and supply you with the results. Fees are surprisingly reasonable. But be sure the company is a member of the national background check accrediting and certifying organizations.

**CAUTION:** Don’t do credit checks until you learn how to do them. Some of them are fairly easy, but they all require certain procedures, forms, and authorizations. Districts can set up accounts with DMV to obtain driving history records. Credit history checks can be obtained once a year without payment from any of the three credit history agencies. Criminal histories can be obtained from the Oregon Department of Public Safety. See Chapter 1, pages 8-9.

### ***Unintended or Inadvertent “Contracts”***

Enforceable contracts can be created by how policies are written and even how verbal “promises” or “performance standards” are expressed. Statements can be made by supervisors and directors intending to give encouragement, motivation, support, and even rewards to employees, but they can also be used by employees to hold employers to these “unintended” and “unwanted” agreements. Even if the district is successful in avoiding the claim, the cost in money, time, energy, productivity, and negative public press can be expensive.

One common mistake is to state vague “standards” subject to interpretation. For example, the district manager tells a new employee s(he) will be given regular status “if s(he) does well and works well with the other employees.” It is very difficult to provide irrefutable evidence that the vague standards were not met. How does one quantify “does well” or “works well”? The best practice is to give no promises, wishes, warnings, or threats verbally, only in writing when advisable and in accordance with established policies.

Other mistakes are to make promises of job security, promotions, or pay raises. Case law has established such statements can be seen as verbal “contracts.”

Employers often unwittingly create contracts of employment by making overly general promises or statements in the hiring process or after initial employment. Even terms such as “permanent employee” or statements as general as telling an employee s(he) will have employment “until you retire” or “as long as funding is available” have been held to be enforceable. Frequently these statements are made by supervisors or managers who do not understand their legal significance and often cannot recall making them.

Contractual commitments that arise in this context typically fall into three categories:

- Express employment agreements;
- Implied employment agreements; and,
- Promissory estoppel claim.

### **Express Employment Agreements**

Express employment agreements refer to employment agreements between an employer and an individual employee. These types of contracts are common among employers and employees in particular types of industries, services, and job classifications [for example, teachers, corporate executives, coaches, etc.] but are relatively uncommon to the average employee.

Express employment agreements between individual employees and employers may be verbal or written. Citing two actual cases will drive home the point.

In the Oregon case ***Seibel v. Liberty Homes, Inc., 85 Or. App. 261, 736 P2d 578 (1987)***. In ***Seibel***, an employee argued his supervisor’s testimony at a workers’ compensation hearing that light duty work was available for him “as long as we have production to run” formed the basis of an enforceable verbal employment agreement to provide him with light duty employment as long as the company was in production. Consequently, when he was terminated for refusal to perform assigned work duties two months after being returned to work, he sued his employer for breach of his “employment agreement.” Following trial, the jury found there was a “contract for life” and awarded the employee approximately \$146,000 for past and future wage losses. The Oregon Court of Appeals and Supreme Court affirmed the jury’s award.

A similar conclusion was reached in ***McPhail v. Milwaukie Lumber Co., 999 P2d 1144 (2000)***. In that case the employee was induced to leave another job and come to work for Milwaukie Lumber Co. by the verbal promise that he would have a job until his retirement, which at the time was 17 years away. Approximately two years later, Milwaukie Lumber Co. issued an employee handbook stating employment with the company was “at will” and could be terminated at any time for any reason. The employee signed the handbook and continued with Milwaukie Lumber Co. for approximately three years until he was fired for violating work policies.

Following termination he sued, claiming he was entitled to employment “until retirement” pursuant to his original verbal agreement. Milwaukie Lumber Co. argued that the employee handbook “at-will” statement which he signed superseded any previous verbal agreement. This argument was not successful. The employee won the case.

### **Implied Employment Agreements**

When there are no express agreements, such as an individual employment agreement, the courts often rely on implied contract theories to restrict an employer’s rights. An implied contract is not a written agreement signed by the employer. Instead it is a construction drawn from the circumstances of the relationship.

The key is to determine whether the employer intended to limit its rights with regard to an employee; e.g., limit its discretion to terminate an employee “at will,” or limit its ability to change benefits or other terms and conditions of employment.

In order to support a claim that an employer intended to limit its discretion to terminate, an employee must be able to show more than his own subjective belief that (s)he is entitled to protection.

Oregon recognizes the validity of implied contracts. The Oregon courts look to policies contained in employee handbooks and policy manuals to determine whether that employer intends its relationship with its employees to be “at will,” as well as an employer’s past practices. The incorporation of progressive discipline policies and rules in employee handbooks may be used as evidence an employer did not intend to preserve the “at-will” employment relationship, unless those policies are carefully worded and integrated with “at-will” protections.

The employee must show promises of continued employment, fair dealing, or the like that demonstrate the mutual intent of the employer and employee to create a contract of employment. Expression of such intent generally arises from policies contained in employee handbooks or manuals.

### **Promissory Estoppel**

Promissory estoppel claims arise when an employer makes a promise of employment to an applicant to change his/her position; i.e., quit another job; incur expenses to relocate a family; sign a residential lease agreement; etc. Under these circumstances, an applicant who reasonably relies on the promise and, in so doing, incurs expenses or other changes in his/her position is entitled to recover damages caused by the reliance. An applicant’s signature on an “at-will” statement communicated before his/her change in position can be used as evidence that the applicant’s reliance was not reasonable.

## ***Tort Liability Arising from Hiring Decisions***

Employers who fail to conduct adequate background checks on applicants may, in certain situations, expose their organizations to liability for negligent hiring.

As a preliminary matter, the tort of negligent hiring should be distinguished from traditional derivative negligence theories. Unlike derivative negligence under the doctrine of *respondent superior*, which makes an employer liable only for the negligent acts of its employees committed during the course and scope of the employee's authority, "negligent hiring" focuses on the employer's negligence in placing an employee in a position where it is reasonably foreseeable that (s)he will injure someone else.

Because "negligent hiring" focuses on the placement of the person in an inappropriate job position, the timing of the incident that causes injury or damage to a third party is irrelevant. ***In a suit for negligent hiring, an employer may be held liable for injuries caused by the foreseeable acts of an employee, irrespective of whether the employee committed the acts within the scope of his/her employment or was, in fact, actually violating the employer's policies or work rules in committing the act.***

Inasmuch as this cause of action arises in negligence, the party bringing such a claim must establish the basic elements of negligence, i.e., that (s)he was owed a duty of care, that the duty was breached and that (s)he suffered damages as a result. As a general rule, an employee may not maintain a negligent hiring or retention claim against his/her employer or its agents.

In addition to establishing the existence of a duty to exercise care, the party seeking damages for negligent hiring must prove that the employer's negligence caused his/her injury. Foreseeability is an important part of proving causation. Under the tort of negligent hiring, employers are legally responsible for the conduct of a reckless or violent employee, if the conduct was foreseeable. The injured party's case rests upon their ability to prove that a reasonable "non-negligent" investigation of the applicant's background would have disclosed information that should have caused a reasonable employer to reject the applicant.

The Oregon courts are among the majority of courts throughout the nation to recognize the tort of negligent hiring. Negligent hiring was first recognized as actionable by the Oregon Supreme Court in 1955. More recently, the Oregon Court of Appeals described liability for negligent hiring as follows:

"... Liability is for negligently placing an employee with known dangerous propensities, or dangerous propensities which could have been discovered by a reasonable investigation, in a position where it is foreseeable that he could injure the plaintiff in the course of the work. The duty to use reasonable care in hiring or retaining employees arises because it is foreseeable that the employee in carrying out his

employment may pose an unreasonable risk of injury to others."  
***Chesterman v. Barmon, 82 Or App 1, 727 P.2d 130, 1 IER 1385 (1986), affirmed and remanded, 305 Or 439, 753 P.2d 404 (1988).***

The following cases represent typical examples of costly negligent hiring mistakes:

- ***Quinonez v. Anderson, 696 P.2d 1342.*** The children of a woman who was killed in an accident may recover against the employer who hired the driver who caused the accident. The employer hired the driver without an investigation of his poor driving record.
- ***Pruitt v. Pavlin, 685 P.2d 1345 (1984).*** Employer held liable for \$200,000 theft by an employee with a past criminal record. Employer would have discovered the criminal record with a reasonable background investigation and placed the employee in a position where it was reasonably foreseeable that a theft would occur.

Reasons exist for districts to seriously consider background checks, since instances similar to the cases above have occurred in Oregon.

### ***Constitutional Restrictions in Hiring Rights***

Constitutional violations of applicant rights typically arise in the context of pre-employment drug screening.

The taking of blood or urine from the body constitutes a search and seizure within the meaning of the Fourth Amendment. ***Schmerber v. California, 384 U.S. 757 (1966).*** The U.S. Supreme Court has issued two important decisions involving Fourth Amendment challenges to employer drug testing rights. In the first of these decisions, the Court upheld the federal government's right to require drug testing of employees after accidents involving loss of life, major property damage or release of hazardous materials, **regardless** of whether the testing is supported by any "individualized suspicion" of employee drug usage. ***Skinner v. Railway Labor Executives Association, 4 IER 224 (U.S. S. Ct. 1989).***

In a second decision issued the same day, the Court upheld the federal government's right to require drug testing of custom service employees who seek promotions to sensitive jobs. ***National Treasury Employees v. Von Raab, 4 IER 248 (U.S. S. Ct. 1980).*** In rendering its decision, the Court identified three compelling interests which may give rise to the right to suspicionless search:

- Work force integrity
- Safety
- Protecting sensitive information.

The best practice for districts which might wish to test applicants for drugs is to be prepared to show that a compelling district interest requiring testing can outweigh the applicant's privacy rights. Additional information is in Chapter 5.

### ***Guaranteeing and Documenting Employees Understand the Policies***

Every employee must have the opportunity to read the policies, ask questions for clarification, question the "rightness" of any policy, and make suggestions. This can be done through individual orientation sessions or group training sessions. Some districts even find it useful to have "refresher reviews" periodically for current employees and directors. Since policies are "two-way" communications, the district needs to be open to rewriting or clarifying policies that may have been received as too vague or may have been interpreted as discriminatory.

The law does not require distributing copies to each employee, as long as a copy is easily and readily accessible to all employees during all work hours. Nevertheless, it is best to distribute a copy to each employee. It might also be a good idea to distribute copies to all directors. To minimize costs, detailed sections can be referenced and the employee advised where to find the total information about these topics.

**Each employee should sign a form documenting they have received or had a chance to review the policies, understand them, and agree to comply with the requirements.**

Naturally, a logical question is "what if the new employee refuses to sign"? The District might do two things.

- Since such refusals are rare, the district might interpret that response as a "red flag" which suggests further discussion. Ask the employee for their reason[s]. Discuss the reasons and seek a common understanding that might allow the employee to sign. Error on the side of caution and have a witness to the conversation.
- If the employee continues to refuse to sign the form, write out a statement documenting the situation: the refusal to sign, any reasons given, and the date. Sign the statement, obtain the signature of the witness, and place it in the employee's personnel file.

## **Chapter 3 – Determining Personnel Needs and Qualifications**

Determining a district's workload and staff needed to accomplish their objectives and responsibilities is the first step to establish a sound personnel management system. The accurate determination of staffing needs is indispensable to a progressive district program.

An analysis of workload and staffing needs should be part of each district's annual work plan. Each update of a district's long-range plan should include a consideration of anticipated staffing needs.

### ***NRCS 1999 Workload Analysis***

The District Conservationist can provide information from the NRCS partnership workload analysis. Its use will be limited as it will indicate only the number of staff days of full-time positions needed. It may not show the types of positions needed. The assumptions used in the 1999 analysis included that staff is being used efficiently and work performed meets NRCS policy, standards, and specifications. These figures provide staffing needs in general terms, a basis to discuss funding with county and state governing bodies, and information for setting priorities and guiding work assignments.

### ***Coordination***

Staffing a district office with adequate personnel is always a challenge for the district. Coordination with NRCS, FSA, and other agencies might minimize duplication of effort, gaps in expertise, imbalance in program demands and services, and uncertainty of roles and responsibilities.

### ***Who Should be Involved?***

An analysis of workload and staffing needs should be a joint effort by the district board, district employees, agencies partnering with the district, and others which might provide insight. The district board, following consideration of information and counsel provided by district and cooperating agency employees, should establish priorities.

### ***Workload Analysis***

All the current, anticipated, and projected activities of a district should be analyzed in terms of required staff days. Activities which should be covered relating to program administration include: personnel and financial management, public participation, information and education activities, and liaisons with local, state, and federal agencies. Activities relating to making surveys and inventories, and assistance with

planning, installing, and maintaining conservation measures, best management practices, erosion control projects, etc. should also be covered.

The analysis should be made first without regard to the available work force. It should be based on what is needed and should reflect the total program to be accomplished by a district. Priorities can later be set to fit the district's yearly objectives to the realities of staff size and availability of other resources.

### ***Process***

Doing a workload analysis is relatively simple. Create a spreadsheet similar to Exhibit 3.1. Using landscape page setup will allow more and wider columns.

1. Identify what work [activities, tasks] needs to be done to carry out the business plan or the annual work plan in the left column under "Activities." Be as specific as possible.
2. Identify how many days it will take to complete each activity or task in the next column to the right.
3. Assign the days to complete each task to each person: employees, directors, NRCS personnel, volunteers, other partners, contractors, etc. Use as many columns as necessary to include who might be involved in any tasks.
4. Sum the days assigned to each person or group.
5. These total figures provide the number of days assigned to each individual. Each full-time employee has 260 days available, minus holidays and other leaves your district provides, so you can quickly identify which employees have been assigned not enough or too many days for their classification.
6. Now comes the fun part. The district must determine if it has enough personnel available to do the work and where cuts to days and activities may need to be made, additional employees hired, volunteers recruited, or other adjustments are required.

### ***Determining Staffing Needs***

After the workload analysis has been completed, the number of staff days available to the district should be determined. All sources should be listed, including district directors, employees, NRCS employees, other partner personnel, watershed groups, volunteers, and others.

By subtracting the number of staff days available from the number of staff days obtained from the work load analysis, the district can arrive at the number of staff days needed. This can be converted to the number of full-time positions needed by dividing the figures by 260 days, minus holiday and leave time. This calculation may also determine current staffing is adequate.

## ***What These Figures Provide***

The figures obtained by following the stated process indicate only the number of staff days of full-time positions needed. It will not show the types of disciplines to hire, such as engineers or soil conservationists, nor will it reveal whether or not current employees are working efficiently. These important determinations must be made by further analysis of work reports, position descriptions, and workload needs.

These figures provide staffing needs in general terms, a basis to discuss funding with county and state governing bodies, and information for setting priorities and guiding work assignments. A compilation of the staffing needs from each district in the state is an excellent tool for districts, state conservation agencies, and state associations when working with local government and state legislatures to support funding requests.

## ***Setting Priorities***

The staffing needs worksheet may reveal more work needs to be done than resources available to do it. At this point a district must set priorities.

When completing a workload analysis, it is important for the district to also consider state-imposed priorities and the impact of USDA activities on the district's program. A properly completed workload analysis will help determine which areas of work to concentrate money and people. It can also help determine which areas of work should be discontinued.

A district may find it necessary, if funds and personnel are limited, to abandon unproductive projects or programs, even though considerable investment may have been made. This is important for effective management. It should also be recognized some activities considered important may never be accomplished. Decisions should be based on the public benefit gained for the cost. Resources should not be spread so thin no area receives adequate attention.

One way of setting priorities is to identify the activity or group of activities that should be carried out if resources were limited to only one activity or group. This then becomes priority number one. Other activities are then identified in the same manner until all activities have been placed in priority order.

Following are items to be considered when establishing priorities.

1. What can be done to make the greatest impact on the conservation and wise use of the soil, water, and related resources of the district?
2. What new and more efficient ways can be found to do the job?
3. What is being done that does not solve the problems or that works against solving the problems?

4. What projects are being duplicated elsewhere or could be done better by others?
5. Will additional funds and/or people be necessary, and will they be available?
6. Is the contemplated activity consistent with the district's long-range business Plan? Vision? Mission?
7. What will be the consequences if the activity is not continued or completed?
8. Does the activity in consideration complement other activities, or is it counter productive?

### ***What Positions to Fill***

Setting priorities will help determine what positions the district should try to fill. Further analysis of progress reports, time reports, existing job descriptions, and available funds may help provide the final answers. It is important to consider all possible classifications such as full-time, part-time, and temporary, and what work may be done by directors, volunteers, partner personnel, and contractors.

### ***Benefits***

Completing a workload analysis and staffing needs inventory produces the following benefits:

1. District officials better understand the district workload and the scope and extent of the district's resources.
2. It provides a document from which future plans can be made.
3. It provides a basis on which funding requests can be made and supported.
4. It provides information to base future personnel management decisions.
5. It promotes efficient use of the available work force.
6. It becomes a foundation for a sound personnel management system.
7. It provides an unbiased format to determine when to decrease staff due to workload and or funding decreases.
8. It clearly identifies when contractors or volunteers should be recruited, if funds are available, but hiring employees is not the best option.

### ***Employee or Independent Contractor?***

Minimum wage, overtime, and other employment laws do not apply to independent contractors. Therefore, many employers seek to avoid the costs and responsibilities associated with employees by classifying some workers "independent contractors." Take care to use these classifications appropriately.

Almost every district experiences a need for an individual with special skills for a short-time project, maybe one that requires using equipment [like a backhoe for

riparian work] or to develop a special computer program, or teach a technical course. It may not be practical or economical to go through the difficulties and time to hire an individual, even for a temporary position. But care must be given to assure the individual truly qualifies as an independent contractor.

Three different methods are commonly used to distinguish between employees and contractors, but they all highlight the same relationship differences.

Agencies that enforce employment laws do not rely on the term "independent contractor," but instead take a close look at the realities of the relationship. The Bureau of Labor and Industries, the U.S. Department of Labor, and the courts use criteria established through court cases. The criterion is commonly referred to as the "economic realities" test.

### **The Economic Realities Test**

No single factor is determinative. However, the following are used to gauge the degree of the worker's economic dependency on the employer:

- The degree of control exercised by the alleged employer.
- The extent of the relative investments of the worker and the alleged employer.
- The degree to which the worker's opportunity for profit and loss is determined by the employer.
- The skill and initiative required to perform the job.
- The permanency of the relationship.

**Note:** The above test is used by the U.S. Department of Labor and the Oregon Bureau of Labor and Industries for minimum wage and/or overtime claims, or for discrimination claims.

### **Independent Contractor Status According to ORS 670.600**

In addition to the "economic realities" test, state and federal agencies have further requirements. For example, ORS 670.600 is an Oregon statute that defines an "independent contractor" for several state agencies including the Oregon Department of Revenue, the Employment Department, the Construction Contractors Board, and the Workers' Compensation Division. The Oregon statute demands all requirements below be met for an individual to be classified as an independent contractor by the Employment Department, the Oregon Department of Revenue, the Workers' Compensation Division, or the Construction Contractors Board.

These requirements include:

- The worker must be free from the direction and control of the person using the services.
- The worker must obtain an assumed business registration and any licenses required by law.
- The worker must furnish the tools and equipment necessary to perform the work.
- The worker may hire or fire employees to perform the work.
- Payment for the services is made on a project basis or periodic retainer basis.
- Construction contractors must be registered with the Construction Contractors Board.
- The worker must have filed appropriate business tax returns for the previous year if the individual was in business in the previous year.
- The individual must represent to the public that an independent business exists to provide labor or services. This could be accomplished if all of the following circumstances exist:
  - The work is performed at a location separate from the private residence of the individual, or at a specific portion of the residence that is set aside for the business.
  - The individual purchases commercial advertising or business cards, or has a trade association membership.
  - A telephone listing and service separate from the residence is used for the business.
  - Written contracts are used to specify work requirements.
  - Labor or services are performed for two or more different persons within a period of one year.
- The individual assumes financial responsibility for defective workmanship. This could be established by performance bonds, warranties, liability insurance, or errors and omission insurance.

### **The IRS 20-Factor Test**

The Internal Revenue Service developed a 20-factor control test to determine if an individual is an employee or an independent contractor. If an individual files a claim with any of the mentioned agencies or if an agency conducts an audit or investigation of an employer's records, the employment status would be determined by these methods.

The IRS uses the following questions to determine **employer control** and therefore presumed status of the employee.

- Do you provide instructions as to when, where, and how work is performed?
- Did you train the worker in order to have the job performed correctly?

- Are the worker's services a vital part of your company's operation?
- Is the person prevented from delegating work to others?
- Is the worker prohibited from hiring, supervising, and paying assistants?
- Does the worker perform services for you on a regular and continuous basis?
- Do you set the hours of service for the worker?
- Does the person work full time for your company?
- Does the worker perform all duties on your company's premises?
- Do you control the order and sequence of the work performed?
- Do you require workers to submit oral or written reports?
- Do you pay the worker by the hour, week, or month at the same time as employee payroll?
- Do you pay the worker's business and travel expenses?
- Do you furnish tools or equipment for the worker?
- Does the worker lack a "significant investment" in tools, equipment, and facilities?
- Is the worker insulated from suffering a loss as a result of the activities performed for your company?
- Does the worker perform services solely for your firm?
- Does the worker not make services available to the general public?
- Do you have the right to discharge the worker at will?
- Can the worker end the relationship without incurring any liability?

### ***Employee or Independent Contractor?***

An **employee** is defined as anyone who performs services for another person or organization under the direction and control of the person or organization. An **independent contractor** is an individual or business that performs labor or services for remuneration, provided the standards of ORS 670.600(1) through 670.600(8) are met.

The following comparison chart will help districts differentiate between who is a district employee and who is an independent contractor.

ITEM	EMPLOYEE	CONTRACTOR
<b>Supervision</b>	Provided by the district, or as delegated by the district.	Free from the direction and control of the district.
<b>Work Schedule</b>	Established by the district, such as 8 a.m. to 5 p.m., Monday through Friday.	Sets own work schedule that may or may not be subject to approval by the district.
<b>Office Space</b>	Provided by the district, Natural Resources Conservation Service (NRCS), or by other agreements by the district and/or NRCS.	Works out of own office or other space leased by the contractor.
<b>Tools &amp; Equipment</b>	Provided by the district, NRCS, or through arrangements with the district or NRCS.	Uses own equipment and tools or provides for the use of non-owned equipment other than that owned by the district or NRCS.
<b>Vehicle</b>	Provided by the district, NRCS, or through arrangements by the district or NRCS. Protected by district or NRCS-provided vehicle insurance.	Uses own or leased vehicle, using private operator's permit or license. Has own vehicle insurance.
<b>Supplies</b>	Provided by the district, NRCS, or through arrangements by the district or NRCS.	Provides own supplies. If purchased as a result of the contract with the district, still considered as being purchased by the contractor.
<b>Telephone</b>	Provided by the district or NRCS, for local and long distance calling for business purposes.	Provides own telephone service.
<b>Business Cards</b>	Uses district card or does not have a card, and refers clients to the district or NRCS address and telephone.	Has own business cards, showing bearer as a company, corporation, consultant, or advisor.

ITEM	EMPLOYEE	CONTRACTOR
<b>Clients</b>	District and its customers and partners are the primary clients.	Normally performs labor or services for two or more different persons within a one-year period.
<b>Hire/Fire</b>	The district board has the authority to hire or fire.	The individual or business has the authority to hire or fire employees working on the project.
<b>Payment</b>	Made to the employee by the district on an hourly, daily, weekly, or monthly basis.	Made to the contractor by the district at the completion of specific portions of the job or by retainer.
<b>Guarantee</b>	The district guarantees the work, not the employee.	The contractor assumes financial responsibility for all defective work or services not provided.
<b>Representation</b>	Represents self as employee of the district.	Holds self out to the public as an independently established business.
<b>Taxes</b>	Pays half of FICA taxes.	Pays FICA in its entirety.
<b>Quarterly Reports</b>	District files federal and state quarterly tax reports.	Responsible for filing own federal and state quarterly tax reports.

*Another test of whether a person can qualify to be an Independent Contractor is to see if he or she meets the requirements in Section B of the CERTIFICATION STATEMENT FOR CORPORATION OR INDEPENDENT CONTRACTOR on page 73 of the 1999 edition of the CONTRACTING HANDBOOK for Soil and Water Conservation Districts.*

### Exhibit 3.1 – Example Workload Analysis Worksheet

Examples of Tasks		Days per Person per Task											Vol	Contractor
		Total Hrs.	Staff			Directors				NRCS				
			BHJ	DR	HIR	DR	BJ	DE	RM	OK	JB			
1	Develop Annual Work Plan													
2	Update Business Plan													
3	Prepare 20 Conservation Plans													
4	Install 10 Conservation Practices													
5	General Office Administration													
6	Soil Stewardship Observance													
7	Water Sampling													
8	Grant Application to EPA													
9	Agency Coordination with:													
10	ODA													
11	NRCS													
12	FSA													
13	Watershed Council(s)													
14	Cooperator Meetings on CSP													
15	District Board Meetings													
16	Education Programs in Schools													
17	Tree Sale													
18	District Conservation Tour													
19	Annual Meeting													
20	Annual Report													
21	Fair Displays													
22	Fundraising – Auction													
23	OACD, NACD Meetings													
24	Vacation, estimated sick leave													
25	Training													
	TOTALS													

\*260 staff days equal one work year

\*Available staff days = 260 staff days minus holidays and leave time

## Chapter 4 – Position Descriptions

One critical step in the hiring process is to detail what the district expects from a particular employee in a well-formulated position description. The position description is a guide the district and its employees can use throughout the term of employment to communicate duties, responsibilities, and terms of the job and to establish the standards against which to measure performance. Position descriptions should be reviewed on a regular basis and updated when duties and responsibilities change.

Communicating the duties and responsibilities of a position to an employee or prospective employee is an essential element in personnel management. Setting standards for the performance of these duties and evaluating the actual performance are inseparable from developing job duties.

### ***Written Position Descriptions***

Communicating the duties, responsibilities, and performance standards of a position to the employee or prospective employee can be best done by a **written** job description. Verbal instructions cannot provide the mutual understanding provided by a written description of the duties and performance requirements. A suggested format for writing position descriptions is included as Exhibit 4.1 in this chapter.

### ***Uses of Position Descriptions***

Written position descriptions assist in personnel management in a variety of ways, including:

1. Determining knowledge, skills, and abilities necessary to perform the job.
2. Establishing equitable and consistent salaries.
3. Recruiting and hiring.
4. Setting performance standards and evaluating job performance.
5. Increasing communication between supervisors and employees.
6. Making staffing decisions based on workload analyses.
7. Identifying possible worksite accommodations.
8. Setting conditions for return-to-work from an on-the-job injury.
9. Managing workers' compensation claims.
10. Achieving maximum productivity.
11. Clarifying roles, responsibilities, and working relationships.
12. Disciplining unacceptable behavior.
13. Coaching job performance.
14. Preventing safety and ergonomic injuries.

## ***Writing Better Position Descriptions***

The following suggestions should prove helpful in writing brief, accurate descriptions. They are not intended to cover all aspects of writing position descriptions, but they should aid the writer to reduce the amount of time and paper involved.

Eight major guidelines should be observed to develop position descriptions.

1. **Describe the position, not the person.**

Describe the tasks, responsibilities, relationships, and the job to be done. Descriptions of the “person” should be included only when such factors as gender, physical strength, height, or other characteristics are **essential** to the job.

2. **Describe the duties and responsibilities, not procedures.**

It is not necessary to detail the step-by-step procedures to perform the duties of a position.

3. **Don't describe minor details.**

Too much detail makes a responsible job appear to be loaded with low-level duties. All positions have major tasks and minor tasks. All engineers do some detailing. All supervisors do some work of employees they supervise. In some places everyone makes coffee. Including all these duties could make minor duties in a position description appear to be major. A principal or major duty should contribute significantly to the achievement of the job and district goals.

One criterion to determine the significance of a task or responsibility is: If you do not intend to measure that item on a performance evaluation, does it belong in the job description?

4. **Separate essential and non-essential duties.**

Not all duties are equally important or central to doing the job. Separate those for which the employee will spend the majority of time or are most critical from those duties which are incidental or secondary to the core responsibilities. **The essential duties are those which should be the focus of the performance evaluation.**

5. **Avoid using technical terminology.**

Use common lay terms. For example, an attorney would not "prepare tort actions under the doctrine of *Res Ipsa Loquitur*." He would merely "prepare civil law suits."

6. **Ensure all requirements or qualifications are essential to the job.**

For example, do not require a “valid driver’s license” if the job does not require driving. An administrative assistance, for example, may be assigned to make bank deposits or take packages for shipping, but may be able to do so without having to drive. If the person could use public transportation, walk, ride a bicycle,

or get someone to drive them where they need to go, then requiring a driver's license would make the district vulnerable to possible complaints and legal action.

- 7. Don't exaggerate nor minimize the work setting or physical requirements.**  
The working conditions and work atmosphere should be very clear and specific, so there are no surprises or potential misunderstandings.

An absurd example will at least get the point across: "Employee will be required to sit at a desk, in front of a computer screen entering data for six hours a day, in a room with no windows, no air conditioning, in a space with three other employees, and also expected to answer the phone and route calls". Such detail may be important because cases have been won in court by disgruntled employees who got carpal tunnel syndrome by having to type all day, when they "were not notified in advance of accepting the job that would be a requirement."

Also detail all the important physical requirements, such as lifting a minimum of 75 pounds; walking distances up to 4 miles; carrying equipment such as survey tools; working in rainy, snowy, and cold weather down to 10 degrees; etc.

- 8. Don't write and write and write.**  
If the first seven suggestions are observed, the eighth should not be a problem. Position descriptions will be the desired length and detail when only major duties of the position are described. Avoid listing every task you can think of that might come under the general job title. Include only those the employee will actually do. If the job changes to include other tasks, amend the job description. It is not helpful to include everything that might be done at some time, maybe, possibly, on any given day, during a career.

## ***Getting Started***

Writing the *first word* is often the most difficult part in describing position duties. For a clue as to how to begin, one can usually look at the position's title or main mission. All mission verbs are action verbs, and it is best to begin each duty with an action verb. This cuts excess words and gives the reader an immediate and accurate understanding of what is being done and at what general level of responsibility.

Examples of action verbs are:

administers, answers, approves, assures, attends, calculates, checks, completes, computes, coordinates, directs, ensures, files, instructs, leads, maintains, manages, operates, organizes, oversees, plans, posts, prepares, provides, selects, serves, studies, supervises, totals, trains, transmits, types

As an example of what is meant by cutting excess words, one could describe a duty by saying: "It is the responsibility of the incumbent in this position to see that all

engineering drawings are filed." Naturally, since this description covers only this position, we know duties of this position are all responsibilities of the position. We can skip those comments. We can also delete the reference to the incumbent, since we are writing about the position and not the person. It's much easier, as well as more understandable, to simply say: "Files engineering drawings" or "Maintains files of engineering drawings."

Regarding a duty, one could say: "This office is very unique in that it requires the incumbent herein to maintain its very responsible records according to standards prescribed by the \_\_\_\_\_ Soil and Water Conservation District."

Creative narrative is not the goal. Stick to duties. The writer could have said: "Maintain records according to district requirements." This does not mean positions should be "played down" by over-summarizing or using small words. Just be concise.

### ***Keeping Position Descriptions Current***

Position descriptions should be kept up-to-date to ensure high productivity and to maintain communications between employees and supervisors. Position descriptions should be dynamic and reflect changes in duties and responsibilities. A joint review by the employee and the supervisor should be made annually, or more often if necessary, to discuss changes in duties and responsibilities. An appropriate time for this review is in conjunction with the performance review.

### ***Sample Position Descriptions***

Included at the end of this chapter as Exhibits 4.2 [two examples] and 4.3 [two examples] are sample position descriptions for District Clerk, Administrative Coordinator, District Technician, and District Manager. The sample position descriptions and lists of duties should be used *only* as guides.

Each employee should have a position description and corresponding performance requirements developed *expressly* for the position. A checklist of key steps to develop a position description is included as Exhibit 4.4.

## ***Exhibit 4.1 – Example Format for a Position Description***

**Letterhead** should be used, or a logo, or some other district identifier.

**TITLE.** The title should be based on the function of the position. It should be clear from the title what the person will do. The rest of the job description should not be a surprise, but clearly deduced from the title.

**INTRODUCTION.** The introduction section should reflect general classification and function information for the position: full-time, part-time, or temporary; exempt or non-exempt; salaried or hourly; regular or limited duration; position is at-will, etc.

**DUTIES AND RESPONSIBILITIES.** This section should lay out, in concise statements, the duties and responsibilities of the position. The tasks should be unique to this position and should not reflect detailed actions or procedures.

- Essential job functions [the core, primary tasks]
- Auxiliary functions [non-essential, secondary, incidental tasks]

**SUPERVISION.** This statement clarifies who is the immediate, day-to-day supervisor of the employee. It should also list those positions this employee will supervise.

**CIVIL RIGHTS.** Delivery of programs and services is carried out as an equal opportunity employer and service provider.

### **REQUIREMENTS**

- Mandatory
- Desirable [skills or experience preferred but not required]
- Education level
- Special Credentials [certification, licenses, specialized training, etc.]

**WORKING CONDITIONS.** This section states very clearly and specifically what the setting for the work will be: space, physical accommodations, location(s), equipment used, etc.

**PHYSICAL DEMANDS OF THE POSITION.** This section specifies the physical requirements of the job such as the need for working in inclement weather, carrying heavy loads, walking long distances, travel requirements, etc. Be specific. Quantify as possible.

**PERFORMANCE REVIEW.** Identify who will conduct the performance evaluation of this position and when.

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Supervisor

\_\_\_\_\_  
Date

**Copies to:** Employee, Supervisor, Employee personnel file

**Exhibit 4.2 – Position Description Examples [Clerical]**

**Example #1**

**TITLE.** District Clerk

**INTRODUCTION.** This position is a district clerk responsible to perform secretarial and clerical duties. The position is full-time, regular, non-exempt, at-will, and hourly.

**DUTIES & RESPONSIBILITIES [ESSENTIAL FUNCTIONS]**

1. Serves as receptionist to the District. Answers phone calls and meets the general public in a courteous and helpful manner.
2. Types correspondence, conservation plans, district newsletter, newspaper copy, various reports, and other material necessary for the operation of the office. There should be no typographical errors, and final copy should be grammatically correct.
3. Maintains records of district business transactions on a daily basis. All financial records will be maintained in a neat and orderly fashion as established by the District Treasurer. Prepares a monthly financial report under the direction of the District Treasurer.
4. Maintains accurate time and attendance reports on all district employees.
5. Maintains district files and records according to established retention schedules.
6. Maintains office supplies in sufficient quantities for office staff.
7. All duties and actions taken by the incumbent of this position while on official duty will be performed in a safe and healthful manner and will be of a nature to reflect favorably on the \_\_\_\_\_ Soil and Water Conservation District.

**SUPERVISION.** This position is supervised by the District Manager. This position does not supervise other employees.

**CIVIL RIGHTS.** This position will perform in accordance with all applicable state and federal laws for equal employment and other requirements of civil rights statutes.

**REQUIREMENTS.** [Include here the applicable education, experience, skills, and credentialing required: education completed, data entry skills, typing speed, basic math proficiency, etc.]

**PHYSICAL REQUIREMENTS AND WORKING CONDITIONS.** [Detail the required physical and work setting demands and requirements.]

**PERFORMANCE REVIEW.** [State who will complete the performance evaluation of this position.]

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

\_\_\_\_\_  
**District Manager**

\_\_\_\_\_  
**Date**

**Copies to:** Employee, Supervisor, Employee personnel file

## Example #2

### **Title. Administrative Coordinator**

#### **Introduction**

This is a full-time, at will, non-exempt, regular position, which serves as the Administrative Coordinator of the \_\_\_\_\_ Soil and Water Conservation District. The position acts on behalf of the District Manager and the District Board of Directors, within the authority delegated by the Board and this description, and reports to the District Manager.

This position manages the district bank accounts and budget. This position will carry out programs related to personnel, purchasing and purchasing contracts, policy development, and annual budgeting in accordance with District policy and Oregon Law.

#### **Essential Functions and Responsibilities**

The Administrative Coordinator responsibilities include:

- Maintain a record of the budget that includes all income and expenses. This includes all accounts in the general budget and special fund accounts.
- Disbursement of funds to pay all bills and encumbrances according to district policy.
- Payroll disbursement for district employees. Submit all reports and payments required, to appropriate agencies – Oregon Department of Revenue, Internal Revenue Service, etc.
- Budget management by monthly informing the board of financial status.
- Manage and maintain personnel records.
- Develop, monitor, and maintain contracts with businesses that supply materials, goods, or services for the district. This includes health and retirement plans.
- Monitor policy and advise District Manager when changes or additions are needed.
- Maintain inventory of all capital assets and district property.
- Represent District Manager at functions when requested.

#### **Tasks and Duties**

The Administrative Coordinator performs the following duties and functions:

- Submit all reports for grants, on time. If information is needed for a report from district personnel, advise appropriate personnel of the information required for reports to be filed on time.
- Assist District Manager to develop position descriptions and assist in keeping position descriptions up-to-date.
- Provide notice to District Manager when personnel reviews should take place.
- Assist the District Manager and the District Board in annual budget process.

- Maintain, for public review, a manual of district policy and a book of Board resolutions. Advise District Manager when revisions, deletions, or additions to district policy are needed.
- Maintain the Employee Handbook. District Manager is to be advised when any changes are required.

**Supervision.** This position is supervised by the District Manager, but it does not supervise other employees.

**Civil Rights.** This position will perform in accordance with all applicable state and federal laws for equal employment and other requirements of civil rights statutes.

**Qualifications**

The qualifications of the Administrative Coordinator are:

- High School Diploma along with business experience is required. Additional education is desired. High School classes relating to the functions and duties are desired.
- Associate Degree in Accounting, Office Management, or related field is preferred.
- Experience in a computer accounting program is required, with preference for QuickBooks Pro.
- Knowledge and ability to use other computer programs related to an office.
- Good communication, writing, and interpersonal skills.
- Ability to work independently and take a leadership role.
- Ability to plan, organize and meet deadlines.
- Ability to effectively manage/supervise staff when directed by the District Manager.

**Job Conditions.** This position is primarily in an office setting operating office equipment such as a computer or copier. This position involves travel to trainings and meetings. Travel for trainings and meetings may be outside of the normal workday and may be as long as one workweek.

**Performance Review.** Performance reviews will be conducted by the District Manager.

\_\_\_\_\_  
Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
District Manager

\_\_\_\_\_  
Date

Copies to: Employee, Supervisor, Employee personnel file

## ***Exhibit 4.3 – Position Description Examples [Technical]***

### **Title. Resource Technician**

**Introduction.** This position is full-time, salaried, at-will, regular, and non-exempt. It provides technical assistance to landowners under policies established by the \_\_\_\_\_ Soil and Water Conservation District.

### **Duties and Responsibilities [Essential Functions]**

1. Provides technical and engineering assistance to landowners in assigned areas according to technical policies of NRCS.
2. Collects soil and water samples as directed.
3. Provides technical information for district policy.
4. Develops and maintains resource inventories.
5. Assists with report writing and conservation plan development.
6. Prepares and presents demonstration plots.
7. Coordinates the district equipment rental program.
8. Maintains personal contact with district cooperators.
9. Maintains valid state driver's license.
10. All duties and actions taken by the incumbent of this position while on official duty will be performed in a safe and healthful manner and will be of a nature to reflect favorably on the \_\_\_\_\_ Soil and Water Conservation District.

**Civil Rights.** This position will perform in accordance with all applicable state and federal laws for equal employment and other requirements of civil rights statutes.

**Supervision.** Day-to-day activities will be coordinated by the District Manager. This position does not supervise other employees.

**Requirements.** [Include here the applicable education, experience, and credentialing required: education completed, data entry skills, typing speed, basic math proficiency, etc.]

**Physical Requirements and Working Conditions.** [Detail the required physical demands and work setting and requirements.]

**Performance Review.** [State who will complete the performance evaluation of this position.]

\_\_\_\_\_  
**Employee**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**District Manager**

\_\_\_\_\_  
**Date**

**Copies to:** Employee, Supervisor, Employee personnel file

## Example #2

### **Title. District Manager**

#### **Introduction**

This is a full-time, at-will, exempt, and regular position which serves as the principal manager of the \_\_\_\_\_ Soil and Water Conservation District. The position acts on behalf of the Board of Directors, within the authority delegated by the Board and this description, and reports to the Board.

The position exists to manage the day-to-day operations of the district, carry out the policies and direction of the organization as established by the board, and provide leadership and direction to staff to develop and carry out programs, plans, and projects approved by the board.

#### **Essential Duties and Responsibilities**

The District Manager's essential responsibilities include:

- Administer, manage, conduct, and coordinate the district's day-to-day operations within approved resource levels and consistent with district plans, policies, and interests established by the board.
- Direct, supervise, and instruct the staff to the most efficient and effective use of their time, activities, skills, and priorities to carry out district activities.
- Represent the district's interests and establish/maintain strong, supportive, and effective working relationships with the Oregon Department of Agriculture, Oregon Watershed Enhancement Board, USDA – Natural Resources Conservation Service, other conservation agencies and districts, associations, organizations, public officials, and landowners.
- Orient, train and develop staff in the technical and professional aspects of their duties, and effectively communicate with them about the district's purpose, direction, plans, programs, policies, and activities.
- Provide leadership and technical support for district plans, programs, and projects.
- Advocate and promote the effective and responsible use and conservation of natural resources with landowners, the general public, other resource-related organizations, associations, and public officials.
- Serves as "budget officer" in developing and presenting the district's annual budget proposal; administers approved annual budget and makes necessary adjustments within approved budget categories, consistent with authority granted by the board.

#### **Auxiliary Functions and Duties**

The District Manager performs the following functions and duties:

- Serves as "appointing authority" in personnel matters, including hiring, developing position descriptions, performance appraisal, discipline and

discharge, and administering the District Salary Administration Plan and other personnel policies.

- Establishes individual employee performance standards and goals; assesses employee progress and performance; recommends salary increases to the board within context of the District Salary Administration Plan.
- Participates in or directs staff in establishing working agreements, grants, conservation plans, and other arrangements with various organizations, landowners or other cooperators, for approval or authorization by the board.
- Oversees and participates as necessary in district's technical fieldwork projects and activities.
- Signs legal documents, agreements, plans, and other documents on behalf of the district, as authorized or directed by the board.
- Leads development of the district's annual Work Plan.
- Participates with the board in developing the district's business plan.
- Establishes financial and purchasing accounts, signs checks, and commits or authorizes expenditures, consistent with authority levels authorized by the board.
- Presents regular reports to the board on district projects, programs, activities, and issues.

### **Requirements**

The qualifications of the District Manager are:

- Bachelor's degree in Agriculture, Natural Resources, Public or Business Administration, or a related field; plus, five years of progressive responsibility in personnel or program management, agency administration, delivery of conservation/natural resource technical/professional services, or similar work. Additional qualifying experience may substitute year-for-year for educational requirement. Previous experience in a public agency is beneficial. Previous experience developing, presenting, and/or managing operational budgets is desirable.
- Excellent verbal and written communication skills required, including demonstrated skill in reading, listening, writing, and public speaking.
- Strong inter-personal and relationship skills required, including demonstrated ability to establish and maintain effective working relationships with Board members, staff, conservation partners, cooperators, public officials, and landowners.
- Demonstrated ability to effectively:
  - + manage/supervise staff;
  - + organize and prioritize the work and activities of self and staff;
  - + manage multiple, diverse priorities; and
  - + direct organizational efforts to accomplish objectives within established timeframes and budget.
- Ability to develop a sufficient working knowledge of theories, principles, practices, and techniques of resource conservation management, along with applicable statutes, programs, and policies.
- Agricultural operation experience, familiarity with conservation practices and issues, or natural resource program experience is beneficial.

**Supervision**

This position exercises direct supervisory authority over Watershed Technical Specialists, Special Projects Coordinator, and Administrative Coordinator. Additional direct or indirect authority may be exercised over occasional, temporary employees, such as interns or temporary agency hires.

The District Manager reports to the Board of Directors. However, between regular meetings of the board, the Manager may consult with the Board Chair on questions of authority, district involvement/commitment, program or management practices, or other activities where there is uncertainty or questions on how or whether to proceed.

**Civil Rights.** This position will perform in accordance with all applicable state and federal laws for equal employment and other requirements of civil rights statutes.

**Job Conditions**

- This position requires travel to conferences, workshops, training sessions, and daytime and evening meetings outside the office. Travel may be outside the normal workday and may be as long as one week.
- In order to carry out these assigned duties, a valid Oregon driver’s license is required. Occasional use of the employee’s own vehicle may be necessary.
- Work is primarily in an office or similar environment, but also may involve fieldwork which could include farms and dairies; rivers, streams and ponds; properties with dense vegetation or woodlands; and other areas with steep, slippery, muddy, rocky, or other hazardous terrain.
- Some physical exertion may be required during fieldwork such as walking, planting vegetation or trees, and using technical equipment and hand tools.

**Requirements.** [Include here the applicable education, experience, and credentialing required: education completed, data entry skills, typing speed, basic math proficiency, etc.]

**Physical Requirements and Working Conditions.** [Detail the required physical demands and work setting and requirements.]

**Performance Review.** [State who will complete the performance evaluation of this position.]

\_\_\_\_\_  
**Employee**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Board Chair**

\_\_\_\_\_  
**Date**

**Copies to:** Employee, Supervisor, Employee personnel file

**Exhibit 4.4 – Checklist to Develop Position Descriptions**

**ITEM COMPLETED**

1. Workload and staffing analysis determine position is needed. \_\_\_\_\_
2. List items or duties to be accomplished by this position. \_\_\_\_\_
3. List the skills / abilities necessary to perform the duties of the position. \_\_\_\_\_
4. Assign responsibility to write the position description. \_\_\_\_\_
5. Check with partner agencies for similar position descriptions for reference and guidance. \_\_\_\_\_
6. Include all items in Exhibit 4.1. \_\_\_\_\_
7. State title and purpose of the position, and where job is to be performed. \_\_\_\_\_
8. State who will provide supervision of the position [title, not name]. \_\_\_\_\_
9. State how employee will be evaluated and by whom. \_\_\_\_\_
10. Provide copies to the full SWCD board for approval. \_\_\_\_\_
11. Provide a copy to the funding source when requested. \_\_\_\_\_
12. Develop objective performance standards in qualitative and quantitative terms. \_\_\_\_\_
13. Each position duty should have a corresponding performance standard. \_\_\_\_\_
14. Standards should be reviewed and agreed to by the directors. \_\_\_\_\_
15. Establish when the performance reviews are to take place. \_\_\_\_\_
16. Place in personnel file. \_\_\_\_\_
17. Give copy to employee. \_\_\_\_\_
18. Give copy to supervisor. \_\_\_\_\_

## Chapter 5 – Recruitment and Hiring

Among the most important decisions a district makes is selecting and hiring employees. Making a poor hiring decision can be costly in terms of lost productivity, replacement costs, excessive supervision time, and lower employee morale, to cite only a few effects. An employee who is not a good fit for their position is an energy drain to directors, manager(s), co-workers, and a roadblock to the district reaching its goals.

### ***Equal Employment Opportunity and Anti-Discrimination Policies***

The district must apply recruiting, hiring, promotion, and compensation to all qualified persons. The district must be committed to equal employment opportunity (EEO) and to the benefits that come from a diverse workforce, and strive to be consistent with federal, state, and municipal EEO laws. Appointments, promotions, assignments, training, and performance evaluations are to be based on individual qualifications and merit, and shall be equally available to all qualified applicants and employees. Each employee is responsible for helping the district maintain a climate that provides equal opportunity for all.

Sample district policy language might use the following paragraphs:

“The district will not tolerate or condone any form of discriminatory harassment of its employees. Immediate action will be taken to stop harassment or discrimination where it exists. Alleged actions of discriminatory harassment by anyone should be reported to the District Manager. If the alleged problem involves the district manager, it should be reported to a district director.

“Alleged discrimination may also be reported to the Oregon Civil Rights Commission and the Federal Equal Opportunity Employment Commission. The hiring process must comply with the Civil Rights Clause of the Cooperative Working Agreement, which states:

“The parties will be in compliance with the nondiscrimination provisions contained in Titles VI and VII of the Civil Rights Act of 1964, as amended. The Civil Rights Restoration Act of 1987 (Public Law 100-259) and other nondiscrimination statutes, namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, and in accordance with regulations of the Secretary of Agriculture (7CFR-15, Subparts A & B) which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or disability be excluded from participation, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance from the Department of Agriculture or any agency thereof.”

## ***Anti-Nepotism***

A person related by consanguinity (blood) or affinity (marriage), within the third degree, may be appointed or hired by the district provided the appointment or hiring is first approved by the full district board or commission. Any district director related to the prospective employee should recuse himself/herself from that vote.

ORS 198.115 reads: **District employee as member of governing board.** A district, by an ordinance or resolution that takes effect at least one year prior to the date of the regular district election, may provide that any individual who is an employee of the district is not eligible to serve as a member of the governing board of the district by which the individual is employed. The district can also create a policy that says no director can also be a district employee. Without the specific policy, no statute prevents a director from also being an employee of the district.

## ***Recruitment and Hiring Process***

**Obtain or Develop an Application Form** and questions to be answered in the application.

See Exhibit 5.3 for a sample Employment Application.

Employment Application forms are important because they provide a permanent record, information about the applicant, and a screening device. Don't try to include everything on an application form. Request only job-related and pertinent information. Federal and state laws prohibit requests for information that may result in discrimination. Be careful to avoid such requests. A sample application form for employment is included in Exhibit 5.3.

**Outline a Recruitment Plan**, which considers the following questions and tasks:

- Will resumes be required or allowed with the application?
- How will applications be accepted (i.e., by fax, email, hand-delivered, regular mail, etc.)? Set up a system for receiving and logging applications.
- Determine who will collect and process the applications.
- How long will recruitment be open? Establish application period and deadline for receipt.
- Advertise the position. See Exhibit 5.1 for a sample newspaper ad.
- Establish an interview panel or interview committee.
- Develop a set of interview questions to be asked of all candidates. See Exhibits 5.7 and 5.8.
- Develop test questions or activities, if applicable.
- Determine where interviews will be held.
- Develop "scoring sheet" for all interview questions to be completed by interviewers. See Exhibit 5.9.

## **Possible Outlets for Advertising Job Openings**

The following can be used by districts to recruit employees depending on local situations and needs. It is recommended advertisements and job announcements be posted with:

- State employment office
- Local/regional newspapers
- Local community colleges or universities
- Available websites (OACD, SDAO, districts, etc.)
- Notice on email lists
- Other SWCDs
- NRCS
- Oregon Workforce Development
- Associations, professional and trade organizations
- Colleagues
- Current Employees
- District Cooperators
- Media
- Posters and Flyers

## ***Recruitment Announcements***

Experience has shown the benefits of preparing a recruitment announcement packet that provides information about the district, the employment application, information regarding the recruitment process and timelines, forms for release of information and stipulations.

The packet should be able to be picked up at the district office, mailed to potential applicants, or attached to an email. See Exhibit 5.2 for a list of possible items to include in a recruitment packet.

## ***Reviewing Employment Applications***

The first step in the selection process is to determine which of the applications are valid. Eliminate those that did not arrive on time, where the applicant does not meet the minimum qualifications, etc.

**Obtain Applications from all applicants.** Require all persons who apply for employment to submit a complete and signed Employment Application.

***Do not accept resumes in lieu of an Employment Application.*** A resume is not a substitute for an Employment Application.

***Do not accept incomplete or unsigned application forms.*** Incomplete and unsigned forms should be rejected and returned to the applicant with a note

explaining that the application must be filled out completely, signed, and returned prior to being considered.

***Do not consider Employment Applications which have expired.*** Expired applications should be sorted out and not considered.

**Obtain an Authorization for Release of Information from all applicants.**

Applicants should be required to sign an authorization form for information to be obtained from former employers at the time they are given an employment application. The applicant's signature may result in poor candidates eliminating themselves from consideration. These forms are also worded to request information you are legally entitled to ask.

Applicants who refuse or fail to submit an Authorization form should be eliminated from consideration for employment.

Using a separate form for the permission to check employment references [Exhibit 5.6] allows the district to fax the form to the previous employer, or college professor, or other. With a signed release form in hand, the former employer being consulted is usually more willing to provide helpful information, rather than just the basics of job title, dates of employment, rate of pay, or eligibility for re-hire.

Exhibit 5.4 provides several questions to ask the applicant to stipulate. Choose those you like the best. The Application in Exhibit 5.3 has several. The state's PD100 form has a number of short statements for permissions or stipulations.

***Conducting the Interview***

A personal, face-to-face interview is an essential part of recruitment. It provides time to exchange information and assess communication skills. The interview team should be a team, not just one individual: preferably two or more directors, the district manager or other supervisor, and possibly partners who might interact closely with the employee. They should solicit as much information from the applicant as possible that will affect the decision to hire. The interviewers should provide the necessary information about the job and the district that will enable the applicant to make decisions. Be honest. Do not leave the person with false impressions about the position duties, the pay, the advancement possibilities, etc.

**NOTE:** Be cautious of an apparent or real "conflict of interest" that might exist between interview panel members and candidates because of family or business relationships.

The essential ingredients in hiring employees are character, interest, and ability, in that order. Statistical studies show that less than 10% of employees are discharged

for lack of ability. Character and interest cannot be judged by reading resumes or even application forms. They are determined by

- effective interviewing and
- responsible, professional reference checks!

Hiring decisions have a greater long-term impact on an organization than termination decisions. Yet employers tend to spend far more time terminating an employee than hiring the best possible candidate.

The difference between time and money spent making an effective hiring decision compared to terminating, replacing, retraining, and possibly defending against legal claims can be considerable.

As the old rule says:  
“if it’s worth doing,  
it’s worth doing well.”

### ***Guidelines for Conducting an Interview***

Employers are encouraged to consider the following factors in conducting interviews:

1. **The interview should begin with a review of the applicant's Employment Application.**

Applicants should be asked to describe their job duties and employment history with past employers, education, gaps in employment history, vague reasons for leaving former jobs, etc. Do not consider applicants whose employment application has expired before the job opening occurs.

In formulating interview questions, avoid inquiries which indicate discriminatory motive. Also, avoid questions or comments which appear stereotypical or indicate you are evaluating men and women, older and younger persons, etc. differently. [For example, asking female applicants if they have small children; asking older appearing applicants when they plan to retire; etc.]

2. **Applicants should be required to answer questions.**

If an applicant appears uncomfortable or unwilling to answer a question, it is generally best to wait for the applicant's response and re-ask the question if necessary. Interviewers should not be satisfied with evasive answers.

3. **Ask the same series of questions of all applicants.**

Although the same questions should be asked of all applicants, exactitude is not required. Depending on how an applicant answers a question, follow-up

questions may be appropriate for one applicant, but not another. [For sample interview questions, see Exhibits 5.7 and 5.8.]

**4. Document the applicant's responses.**

Do not, however, include in your documentation information that cannot be legally used in making hiring decisions. See Exhibit 5.6.

**5. Limit questions to those acceptable under employment discrimination and other laws.**

It is unlawful to refuse to hire someone because of his/her gender (including pregnancy); race; national origin; religion; age (over 18); marital status; or other protected status under federal or state law unless the applicant's gender, race, age, etc. is a bona-fide occupational qualification.

If an applicant raises a medical restriction, the focus should be on whether that person can currently perform the essential functions of the job, not past medical history or risk of future injury.

**6. Encourage the applicant by using probing, open-ended interview questions.**

Questions requiring short or predictable answers seldom reveal the character or values of the person being interviewed. Don't be afraid to probe – go deeper into certain topics or explore information more.

- Why?
- What caused that to happen?
- Under what circumstances did that occur?
- Who else was involved in that decision?
- Would you do the same thing again?

**7. Include open-ended questions [behavioral, hypothetical] in your interview.**

Consider the position you are seeking to fill and ask the applicant questions about how s(he) would react to situations that a person employed in that position may have to face. Hypothetical questions can provide valuable insight into an applicant's ability to respond to work-related matters, such as:

- What would you do if...?
- How would you react if...?
- How would you solve...?
- In the event that.....

**8. Avoid leading questions and questions with predictable "right" answers.**

These types of questions imply there is a single correct answer and consequently illicit a predictable response. [For example, "You plan on finishing college, don't you?"] You cannot hope to learn anything about the applicant by asking these types of questions.

9. **Encourage the applicant to share information by using softer introductory phrases, neutral, rather than emotional terms, and active listening skills.** Use active-listening skills – talk less, listen more – listen with the “third ear.”
  - What prompted you to . . . ?
  - Is it possible that . . . ?
  - How did you happen to . . . ?
  - What led you to . . . ?
  - Describe for me a specific time when . . .
  - Tell me about your past work experiences.
10. **Avoid “cross-examination” questions** that will make the applicant defensive and more guarded.
11. **Don’t share information that reveals the “perfect candidate” for the job.** More than likely the applicant will parrot back to you that information, even if it is not descriptive of them.
12. **Use silence to your advantage.** Wait for the applicant to answer the question. Don’t get impatient. The applicant taking time to formulate the answer, rather than immediately responding, may be a positive quality you will appreciate.
13. **Prepare, prepare, and prepare for the interview.**
  - Allow a sufficient amount of time [as important as hiring is, interviews cannot be rushed.]
  - Select an appropriate environment [comfortable, private, pleasant, etc.]
  - Select a well-balanced, insightful interviewing committee whose members are respectful and knowledgeable of EEO obligations.
  - Review the applications carefully.
  - Formulate interview questions [select from a general list but have questions pertaining specifically to the position].
14. **Avoid controversy.** Never interrupt an applicant. Avoid putting the applicant on the defensive by arguing or displaying authority, but do not avoid difficult questions.
15. **Avoid leading questions,** such as, “Doesn’t your present job call for considerable planning?” Instead ask, “What planning responsibilities do you have in your present job?”
16. **Make mental and written notes** on each question. Be prepared to follow up on specific areas. Be objective in your evaluation. See the Interview Evaluation Form.
17. **Give the applicant an opportunity to ask questions about district employment.**
18. **Allow each applicant interviewed the same amount of time.**
19. **Redirect applicants** who volunteer information that cannot lawfully be used in making hiring decisions. [Unfortunately, you are responsible for “knowing” that

information offered by the interviewee, even though you are not allowed to ask questions that would elicit that information.] So politely stop the person from telling you what you don't want to hear by asking them to answer only the questions asked.

20. **Document “usable” information**, but do not document information that cannot be lawfully used in making hiring decisions.

### ***“Red Flags” in Evaluating Applicants***

Employers should be guided by the following factors in evaluating applicants and making hiring recommendations. They are “red flags” that should prompt additional questions, investigation, and/or interviewing during reference checks. In other words, they should not be single determining factors about the applicant's competence to do the job, but potential concerns deserving further exploration – digging deeper.

- **Applicants with unrealistic wage and promotion expectations.**

Applicants with expectations beyond the employer's resources are less likely to remain satisfied.

- **The apparently over-qualified applicant.**

This situation is especially troublesome in periods of high unemployment, when highly skilled or educated individuals are unable to find available work. If someone is hired who appears on paper to be too skilled for the job, it is possible that applicant may seek other employment as soon as his/her job prospects improve.

An attempt should, however, be made to determine the reason why the over-qualified applicant is seeking the job. This type of applicant generally falls into two categories: employees who are victims of industry changes, personal lifestyle choices, or other factors which do not reflect on their own abilities **and** employees who are highly qualified, but unable to work well with other people. The second possibility should be examined carefully.

- **The applicant who would take a substantial reduction in pay.**

When an applicant has previously received a higher rate of pay, s(he) may have become used to a higher standard of living. An employee seeking a job at a lower pay should be a red flag to conduct a thorough reference check to determine the reason why.

- **The applicant who wants to be rewarded with unreasonable salary or benefit levels before earning that reward.**

If an individual has been employed in several jobs in the last several years, that individual may be a short-term employee. Furthermore, high turnover is a red flag to determine the reason for these job changes.

- **Dissatisfied or frustrated people.**  
 Employees who are dissatisfied with their lives tend to manifest this dissatisfaction through negative employment relationships. A negative person often infects those s(he) works around with his/her dissatisfaction. Certain words, tone of voice, facial expressions, and body language should be noted that might express negative attitudes about previous work.
- **The person who has unexplained "gaps" in his/her work history.**  
 Unless the applicant can give you a satisfactory explanation for periods of not working, gaps in an employment history should be explored. It can mean the applicant is trying to hide a job that resulted in termination or other information that might lead to refusal to hire.
- **The applicant whose employment history shows declining levels of job responsibility.**  
 A capable, well-motivated applicant's employment history will usually show increasing or stable levels of job responsibility. A pattern of declining job responsibility may indicate a poor performance.
- **An applicant whose reasons for leaving previous jobs are vague or unsatisfactory.**  
 Employers should follow-up vague responses by asking the applicant for more specific reasons why s(he) left previous employers. Truthful responses can be encouraged by reminding applicants that they have signed a form allowing contacts with former employers.
- **A person who has a "chip on the shoulder" or excuses for his/her employment record.**  
 If an applicant attempts to explain away potentially negative aspects of his/her employment history, education, etc., the chances are s(he) will continue to try to "explain away" negative aspects of his/her performance once hired. This type of person may have a difficult time assuming responsibility for their own shortcomings and consequently is more likely to be a negative influence.
- **"Princes" and "princesses".**  
 Applicants who reveal they consider themselves "special" generally lack the willingness to subordinate their desires to those of the group and consequently may negatively affect teamwork and morale.

### ***Selection and Follow-Up***

Directors have the right and obligation to know about the employee's skills, work experience, and abilities. It is much easier to hire than to terminate an employee. Potential loss of time, training, and morale accompany a poor hiring decision, and legal problems may arise.

If a new employee chooses to change jobs, and leaves the employment of the district within six months after the original recruitment took place, the conservation district may offer the position to the next most qualified person, from among the group it interviewed earlier, without advertising and going through the recruitment process again.

A conservation district may also hire someone, for a short duration, as a **temporary** employee. It is not required the district advertise and recruit to fill a temporary position. Utilization of a temporary position allows a district to get someone on staff quickly to do a short duration job – six months or less.

When the interview team has made its selection, the team should check references provided by the applicant. In addition, it is recommended that the team request a criminal history records check through the Oregon State Police. [See Chapter 1, Pages 8-9.]

Be sure to follow up with all applicants.

- A letter should be sent to the applicant who has accepted the position as well as to those applicants who were not hired.
- See Exhibits 5.10a and 5.10b, Confirmation of Acceptance Letter or Job Offer letters.
- When one applicant accepts the job offer, send letters to the other applicants. See 5.11, Not Hire Letter.
- Ensure the individual hired completes an Applicant Tracking Form” [Exhibit 5.13] to keep records for civil rights purposes. This form is in addition a form the district should create to get “emergency contact information” for the individual.
- See Exhibit 5.14 regarding post-offer physical exams.
- See Exhibit 5.15 regarding post-offer drug screens.
- See Exhibit 10.1 for Driving Record issues.
- See Exhibit 5.5 for sample Fair Credit Reporting Act form to be signed by applicant; See <http://www.ftc.gov/bcp/online/pubs/credit/fcrasummary.pdf> for information that must be given to the applicant when requesting certain background checks through the use of a third-party.

### ***Written Job Offer***

Use the “Recruitment Information” to develop a written job offer. Negotiate, if necessary. It is highly recommended the written job offer outline the specific terms and conditions of employment, and that the candidate signs the offer to acknowledge agreement with the terms. See Exhibits 5.10a and 5.10b.

Upon receipt of a signed acceptance of offer, notify the other applicants that the position has been filled and thank them for their interest.

### ***Reference Checks***

The best predictor of future behavior is past behavior. Consequently, former employers are often the best predictor of the likely outcome of your hiring decision. Yet all too often, employers refuse to share information that can lawfully be provided in a reference check. Consequently, many employers anticipate their reference

check requests will be declined and do not attempt to obtain information that could avoid a hiring mistake.

Reference checks are also useful to eliminate candidates who have given false information and to protect against negligent hiring claims.

### **Applicant Authorization for Reference Checks**

Because ORS 30.178 is relatively new and has not yet been interpreted by an appellate court, it is uncertain how broadly it will be applied. Employers may, therefore, wish to buttress their practices by requiring a more expansive authorization for release of information.

Generally speaking, such authorizations are more effective in eliciting information and less likely to prompt a responding employer to provide information that cannot lawfully be used in making employment decisions, if the questions posed are tailored to a legitimate objective. For instance, asking an applicant's former employer to comment on his/her dependability or attendance (excluding workers' compensation, FMLA, OFLA, military, and other protected leaves) is preferable to simply asking a former employer to comment on dependability or attendance. See Exhibit 5.6 for sample reference check authorization form.

### **ORS 30.178 – Reference Checks/Qualified Immunity**

Oregon law grants "qualified immunity for employers to share reference check information. Employers cannot be sued for exchanging information, provided they stay within certain statutory limitations. The full text of the Oregon statute reads as follows:

#### **30.178. Liability of employer for disclosing information about employee to new employer; no action based on compelled self-publication.**

- (1) An employer who discloses information about a former employee's job performance to a prospective employer of the former employee upon request of the prospective employer or of the former employee is presumed to be acting in good faith and, unless lack of good faith is shown by a preponderance of the evidence, is immune from civil liability for such disclosure or its consequences. For purposes of this section, the presumption of good faith is rebutted upon a showing that the information disclosed by the employer was knowingly false or deliberately misleading, was rendered with malicious purpose, or violated any civil right of the former employee protected under ORS Chapter 659.
- (2) An action for defamation may not be maintained against an employer by an employee who is terminated by the employer based on a claim that in seeking subsequent employment the former

employee will be forced to reveal the reasons given by the employer for the termination.

A copy of the statute may be faxed to reluctant former employers to maximize the likelihood of a reference check response.

This pro-employer law affords employers an opportunity to respond to reference check requests without exposure to liability, provided the employer acts within the limitations of the statute. These limitations fall within two general categories.

First, the statute does **not** apply:

- **If the reference check information is volunteered without request.** The protections of the statute are invoked only if a reference is requested by the prospective employer or former employee.
- **If the reference check is requested on a current employee.** On its face, the statute applies only to disclosures about a "former employee."
- **If information is disclosed that goes beyond discussion of a former employee's job performance.** The statute protects the good faith sharing of information regarding a former employee's "job performance." Presumably, the reference to job performance encompasses a discussion of the former employee's skills, qualifications, ability to work cooperatively with others, dependability, eligibility for rehire, etc. However, given the lack of clear legislative intent and absence of judicial interpretation regarding the breadth of the words "job performance," the precise scope of the statutory protection is uncertain at this time.

Second, the statute applies only if the employer giving the information acts in "good faith." Good faith does **not** exist when:

- The former employer gives knowingly false or deliberately misleading information;
- The former employer gives information with a malicious purpose; **or**
- The former employer gives information in violation of the former employee's civil rights under ORS Chapter 659.

### **Disclosures prohibited under ORS Chapter 659**

Both federal and state employment discrimination laws prohibit "retaliation." The state law prohibitions against retaliation are codified in ORS 659.030(f) which states it is an unfair employment practice for an employer to refuse to hire or otherwise discriminate against an individual because s(he) has:

- Opposed practices forbidden by employment discrimination laws;

- Filed a complaint or, under federal law, made a charge claiming a violation of employment discrimination laws; **or**
- Testified, assisted or, under federal law, participated in employment discrimination proceedings.

Although this law seems to be directed against blatant action, prohibited retaliation can take a number of subtle forms. One common form of prohibited retaliation arises in the context of reference checks.

Under ORS Chapter 659 and its federal counterparts, a former employer is prohibited from disclosing an employee's "opposition" to employment discrimination or "participation" in employment discrimination proceedings to a prospective employer. With regard to opposition activity, an employee is protected from disclosure even if one practice claimed to be discriminatory is entirely lawful, provided the employee had a "reasonable belief" that it was unlawful. When a former employer shares information to a prospective employer about an employee's opposition to employment discrimination or participation in protected activity **and** the prospective employer relies on that information to deny employment, both employers are exposed to liability. The prospective employer is exposed to liability for discriminatory refusal to hire the applicant based on his/her protected activity. The former employer is exposed to liability for "retaliating" against the applicant by disclosing information that cannot lawfully be used in making hiring decisions.

In short, the protections of ORS 30.178 do not immunize the former employer from liability because the employer violated the civil rights of the former employee protected under ORS Chapter 659.

The same prohibition that applies to bar disclosure of an employee's "protected activities" applies to bar disclosure of an employee's "protected class" status. Because a prospective employer cannot deny employment to an individual based on his/her age, race, national origin, pregnancy, marital status, disability, etc., such information should not be disclosed to a prospective employer by a former employer.

Lastly, state and federal laws barring retaliation also prohibit former employers from retaliating against an employee/former employee by refusing to give references or giving negative references based on that individual's protected activities or protected class status.

The following court decisions<sup>3</sup> illustrate the broad restrictions imposed on a former employer's right to disclose information regarding an employee/former employee's protected activities or protected class:

- ***Rutherford v. American Bank of Commerce, 565 F2d 1162, 16 FEP Cases 26 (19th Cir. 1977)***. Bank retaliated against former employee when it

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<sup>3</sup> The decisions cited are federal court decisions. ORS 659.030(f) is modeled after federal law and is relied upon as persuasive by the Bureau of labor and Industries and state courts.

advised another financial institution with which she was seeking employment that she had filed a sex discrimination charge.

- ***Putchenko v. C.B. Dolge Co., 581 F2d 1052, 18 FEP Cases 691 (2d Cir. 1978)***. Title VII's ban on retaliation prohibits former employer from refusing to provide employee with reference in retaliation for her having filed charges of sexual harassment with the Equal Employment Opportunity Commission.

### ***Exhibit 5.1 – Sample Advertisement for Open Position***

**[SWCD letterhead – not used in newspapers]**

APPLICATIONS ARE NOW BEING ACCEPTED for a **[insert position title]** at the \_\_\_\_\_ Soil and Water Conservation District in **Clean Water, Oregon**. Duties include **[insert a brief summary of major position duties and responsibilities]**.

Application packets are available from the \_\_\_\_\_ SWCD, **1234 Conservation Drive, Clean Water, Oregon 54321**, or phone **(123) 555-4321**.

Applications will be accepted until **1:00 p.m. on Friday, Month Day, 20\_\_**.

Reference **[www.anoregonswcd.org](http://www.anoregonswcd.org)** for more information.

The \_\_\_\_\_ SWCD is an equal opportunity employer and service provider.

## ***Exhibit 5.2 – Recruitment Announcement Contents Packet***

### Recruitment Announcement Contents

- A. General background on the district
- B. General Information
  - 1. Location of work sites and district office
  - 2. Recruitment announcement's use
  - 3. Details on Position
    - Start date
    - End date or period through which funding has been secured
    - Supervised by
    - Supervise others
    - Salary range
    - Exempt or non-exempt
    - Full-time, part-time, or temporary
    - Benefits
  - 4. Working conditions and locations
  - 5. EEO statement
  - 6. General statement of duties
  - 7. Eligibility
    - Minimum requirements
    - Preferences given
    - Working conditions and physical demands of the job
  - 8. Minimum materials to be submitted
    - Application
    - Resume if available [not substitute for the application]
    - "This is the Test" answers to specific questions provided as instructed
    - Background checks if necessary—Authorization pages to be signed and returned with application
  - 9. Application process
    - How to get application packet
    - Where to send application and how it can be received [for example, only by delivery or mail, no fax or email attachments]
    - Closing date and hour [suggestion, make it early in the afternoon]
    - Date(s) interviews will be scheduled for those selected
    - Date for final decision
    - Notification of actions taken sent to all applicants

### Recruitment Packet

- A. Cover letter on letterhead
- B. Recruitment announcement
- C. Employment Application
- D. District brochure
- E. "To apply" requirements
- F. Directors of how to send information
- G. Schedule of activities for advertising, interviews, selection, and hiring.

**Exhibit 5.3 – Sample Employment Application**

\_\_\_\_\_ Soil and Water Conservation District

**APPLICATION FOR EMPLOYMENT**  
*(Equal Employment Opportunity Employer)*

**GENERAL**

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: (\_\_\_\_) \_\_\_\_\_

DATE AVAILABLE FOR EMPLOYMENT: \_\_\_\_

Are you employed now?  YES  NO

May we contact your present employer?  YES  NO

If YES: Name: \_\_\_\_\_

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

Telephone Numbers: \_\_\_\_\_

Are you prevented from lawfully becoming employed in this country because of Visa or Immigration status?

YES  NO

Type of position you are seeking: \_\_\_\_\_

Wages desired: \_\_\_\_\_

Do you have a valid driver's license?  YES  NO

License No. \_\_\_\_\_ State: \_\_\_\_\_

Can you perform the essential functions of the job(s) for which you are applying?

YES  NO

Have you pled guilty or been convicted of a felony? (Please note that a "YES" answer will not automatically bar you from consideration for employment.)

YES  NO

If YES, please explain.

\_\_\_\_\_  
\_\_\_\_\_

This employer is an equal employment opportunity employer. All applicants will be considered without regard to age, color, national origin, religion, gender, or other protected status in accordance with applicable federal and state equal employment opportunity laws.

**EDUCATION**

	ELEMENTARY	HIGH	COLLEGE	GRADUATE SCHOOL
NAME:				
YEARS				
COMPLETED:	4 5 6 7 8	9 10 11 12	1 2 3 4	1 2 3 4
COURSE OF				
STUDY:				

**SPECIAL SKILLS, QUALIFICATIONS, AND CONSIDERATIONS**

Summarize special skills and qualifications, volunteer activities, military experience, employment or other activities related to the job you are seeking:

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**REFERENCES**

List 3 non-relatives familiar with your qualifications and actual work history and ability.

	<u>Name</u>	<u>Occupation / Relationship</u>	<u>Years Known</u>	<u>Telephone</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

**EMPLOYMENT EXPERIENCE**

Start with your present or last job. List your last 3 jobs in order. Do not omit any job.

Employer: \_\_\_\_\_ Employed from: \_\_\_\_\_ to \_\_\_\_\_  
(month/year) (month/year)

Address: \_\_\_\_\_ Telephone No.: (\_\_\_\_) \_\_\_\_\_

What did you like most about your job? \_\_\_\_\_  
\_\_\_\_\_

What did you like least about your job? \_\_\_\_\_  
\_\_\_\_\_

Reason for leaving: \_\_\_\_\_  
\_\_\_\_\_



Employer: \_\_\_\_\_ Employed from: \_\_\_\_\_ to \_\_\_\_\_  
(month/year) (month/year)

Address: \_\_\_\_\_ Telephone No.: (\_\_\_\_) \_\_\_\_\_

What did you like most about your job? \_\_\_\_\_  
\_\_\_\_\_

What did you like least about your job? \_\_\_\_\_  
\_\_\_\_\_

Reason for leaving: \_\_\_\_\_  
\_\_\_\_\_

---

Employer: \_\_\_\_\_ Employed from: \_\_\_\_\_ to \_\_\_\_\_  
(month/year) (month/year)

Address: \_\_\_\_\_ Telephone No.: (\_\_\_\_) \_\_\_\_\_

What did you like most about your job? \_\_\_\_\_  
\_\_\_\_\_

What did you like least about your job? \_\_\_\_\_  
\_\_\_\_\_

Reason for leaving: \_\_\_\_\_  
\_\_\_\_\_



## ***Exhibit 5.4 – Key Factors or Questions for Applicant Certification***

**Please read carefully, initial each paragraph, and sign below.**

\_\_\_\_\_ I certify I have answered the above questions truthfully and have not withheld any initial information relative to my application. I understand any falsification, misrepresentation, or omission, as well as any misleading statements or omissions of the application information, attachments, and supporting documents generally will result in denial of employment or immediate termination, if discovered after hire.

\_\_\_\_\_ I authorize [district name] to thoroughly investigate my references, work record, initial education and other matters related to my suitability for employment, and further authorize the references I have listed to disclose to the district any and all letters, reports, and other information related to my work records, without giving me prior notice of such disclosure. In addition, I release [district name], my former employers, and all other persons, corporations, partnerships, and associations from any and all claims, demands or liabilities arising out of or in any way related to such investigation or disclosure.

\_\_\_\_\_ I authorize [district name] to investigate whether I have a criminal record of convictions, and, if so, the nature of such convictions and all the surrounding circumstances of the conviction. [District name] has advised me any criminal background check will focus on convictions, and that a criminal record will not necessarily disqualify me from employment.

\_\_\_\_\_ If hired, I recognize the rules and policies of [district name]. I understand my employment and compensation can be terminated at any time, with or without cause, and with or without notice, at the option of [district name] or myself. I understand the [Official's Title] of the district is the only person who will ever have the authority to create any other terms of employment and/or to enter into any employment contract, and all such contracts must be in writing and signed by both parties. However, I also understand unless otherwise stated in an employment contract, the district may change, withdraw and interpret other policies [including wages, hours and working conditions] as it deems appropriate.

\_\_\_\_\_ I understand and acknowledge I may be required to submit to a physical examination, including drug test. Additionally, I hereby authorize the release of the results of such an examination to [district name] for their use to evaluate my suitability for employment. Further, I release the examining facility and [district name] from any and all liability, and from any damage that may result from the release of such information.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **Exhibit 5.5 – Applicant for a Disclosure and Consent**

THE FOLLOWING DISCLOSURES ARE REQUIRED UNDER THE FAIR CREDIT REPORTING ACT AND/OR STATE LAW. READ THEM CAREFULLY BEFORE SIGNING THE CONSENT BELOW.

THIS IS TO ADVISE YOU THAT:

- If you are selected as a finalist for a position with \_\_\_\_\_, an investigation of your criminal convictions will be conducted. (NOTE: Applicants will not automatically be excluded from consideration, if previously convicted of a crime. We will evaluate the applicant's suitability for employment based on the totality of circumstances, such as the nature of the crime; recentness; type of position sought; etc.)
- If you are selected as a finalist for a position with \_\_\_\_\_ that requires a commercial driving license, an investigation of your driving record will also be conducted.
- Personal information that you provide to \_\_\_\_\_, including the information requested below, may be used to obtain these reports from one or more consumer credit agency [agencies that regularly provide these reports for a fee.]

PERSONAL INFORMATION:

Name: \_\_\_\_\_  
Last First Middle

Alias/Maiden Name: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ SOCIAL SECURITY #: \_\_\_\_\_

Driver's License #: \_\_\_\_\_ STATE OF ISSUE: \_\_\_\_\_

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

List all states you have lived in since age 18: \_\_\_\_\_

For each state except Oregon, please list the city and county where you lived, by state: \_\_\_\_\_

### **Agreement and Consent**

I authorize \_\_\_\_\_ to inquire concerning my criminal conviction history and driving record through a consumer reporting agency. I understand below that I am agreeing that \_\_\_\_\_ may use information that I provide to obtain these reports.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **Exhibit 5.6 – Applicant Authorization for Reference Checks**

I hereby authorize my past employers to release information to the \_\_\_\_\_ Soil and Water Conservation District regarding my employment. This release of information covers my employment record in general, including information on the following:

1. Dates of employment.
2. Position(s) held.
3. The quality and quantity of my work.
4. My attendance habits [excluding workers' compensation, pregnancy, disability, FMLA, and other protected absences].
5. My relationship with co-workers, supervisors, and managers.
6. My attitude toward work [cooperative? positive? etc.].
7. Reason for leaving and eligibility for rehire. [Would the employer rehire if they had to do it all over again?]
8. Strengths and limitations.
9. Willingness to comply with policies and standards.
10. Whether I had outbursts of temper; threatened or provoked fights with or assaulted others; harassed co-workers or customers; or engaged in any other hostile, violent, or disruptive behavior.
11. Other relevant information regarding my performance, skills, abilities, work habits, suitability for employment sought, etc.

**I agree all former employers who provide such information are indemnified and released from liability arising from such disclosures. I also understand if I do not sign this authorization, my application will be disallowed.**

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## ***Exhibit 5.7 – Sample Interview Questions***

Listed below are 15 sample interview questions. You need not use all of these questions in the interview. Pick the questions most appropriate to the position being filled. However, each candidate for a particular position should be asked the same questions.

1. Please explain your familiarity with soil and water conservation district programs.
2. What education and work experience have you had, and how would it relate to this position?
3. Have you had any jobs where you have had to answer questions for people who might be angry or upset and how did you handle such situations?
4. Have you ever had to decide what work should be done first? How would you go about setting priorities if you have five jobs that people wanted finished immediately?
5. Have you had any experience in paying bills and keeping budget records? Describe.
6. Tell us about current jobs or past jobs that qualified you for the job and describe the level of responsibility, duties, etc.
7. Explain to us how you have worked independently in the past?
8. Share experiences you have had working in a team atmosphere.
9. Have you had any experience speaking before groups? Share an experience.
10. Share your writing samples with us.
11. Are you aware this position may occasionally involve working hours other than normal standard work week?
12. How does this job fit in with your long-range career goals?
13. If you were selected to fill this position, how soon could you begin work?
14. Is there anything you would like to tell us that you think would help us make a decision on employment?
15. Do you have any other questions about the job?

Other questions can be developed relating to the specific job to be performed. These might include more specific questions about technical experience, clerical qualifications, or organizational skills. Questions should be designed to encourage the applicant to talk. “Tell me” questions work well for this. No questions should be asked which violate civil rights and/or equal employment opportunity provisions. See Exhibit 5.5—Do’s and Don’ts for Interviewing Questions.

Make mental and written notes throughout the interview. Review your reactions with other interviewers after each interview. The interview team and the individual interviewed should follow up if questions develop after the interview.

## Exhibit 5.8 – Do’s and Don’ts for Interviewing Questions

### PRE-EMPLOYMENT INQUIRIES

THE FOLLOWING INQUIRIES HAVE BEEN IDENTIFIED AS POTENTIALLY DISCRIMINATORY. THIS LIST IS NOT EXHAUSTIVE BUT IS ILLUSTRATIVE OF TYPES OF QUESTIONS THAT SHOULD BE EVALUATED CLOSELY BY EMPLOYERS AND AVOIDED WHENEVER POSSIBLE:

#### I. QUESTIONS ASKING INFORMATION ABOUT PROTECTED CLASS STATUS:

PROTECTED CLASS	INAPPROPRIATE INQUIRIES	COMMENTS	APPROPRIATE INQUIRIES
Marital status: Divorced? Separated?	Are you married?	Since it is illegal to discriminate on the basis of marital status, all these inquiries are inappropriate. One's marital status has nothing to do with his/her ability to perform the job, nor is this an effective means of discerning one's "character."	Who should be contacted in case of emergency? It is however recommended that this question be asked post-hire.
Age	Birthdate? How old are you? When did you graduate from high school?	If it is necessary to know that someone is over a certain age for legal reasons, for example, a waiter/waitress serving alcohol, this question should be directly asked.	Are you over the age of 18?
Race: Sex:	What is your race? Sex? Furnish a photograph. Hair and eye color.	If it is necessary to ask for this information for affirmative action purposes, these inquiries should be accompanied by a statement indicating that the information is needed for affirmative action reporting purposes and will not be used to discriminate.	The following information is requested to enable the company to monitor its affirmative action goals. Although you are not required to answer, your answer would be appreciated.  [ ] Female [ ] Male [ ] Minority  Specify:
Sex	Are you pregnant?	Discrimination on the basis of pregnancy is sex discrimination.	Can you perform the essential functions of the job?
Injured worker	Have you ever applied for Workers' Compensation?	It is illegal to turn someone down for a job simply because that person has	Can you perform the essential functions of the job?

PROTECTED CLASS	INAPPROPRIATE INQUIRIES	COMMENTS	APPROPRIATE INQUIRIES
		applied for Workers' Compensation.	
Religion	What is your religious affiliation? What clubs/associations are you a member of? Does your religion prevent you from working Saturdays? Sundays?	The first two questions are inappropriate. Religious affiliation is no indication of work ability. Asking for membership information may reveal religious affiliation; club membership is not an indicator of work ability. It may be necessary for an employer to know if an applicant cannot work Saturdays or Sundays because of religious beliefs. However, an employer has an obligation to accommodate those beliefs unless it would cause undue hardship to the business.	Are you available for weekend work?
National origin Citizenship	Are you native born or naturalized? Requirement of proof of citizenship. Birthplace of parents or spouse.	It is illegal to discriminate based on national origin and citizenship. Questions must be narrowly tailored to determine only if the applicant is legally entitled to work in the United States.	If you are not a U.S. Citizen, are you legally able to work in this country?
Mental or physical disability	Do you have any physical or mental limitations which could affect your ability to safely perform the job for which you have applied? Do you have, or have you ever had: cancer, epilepsy, addiction to any drugs, alcohol, etc.? Have you ever been treated for a mental condition?	A job cannot be refused because of a mental or physical disability that would not prevent the person from performing the functions of the job <b>after</b> reasonable accommodation. Moreover, it is illegal for any employer covered by the Americans with Disabilities Act to ask pre-offer questions regarding an applicant's medical condition.	Can you perform the essential function of the job? If the applicant volunteers that a medical condition prevents him/her from performing an essential function, the employer may ask questions to determine whether the applicant would qualify as "disabled." If the applicant is disabled, reasonable accommodation obligations must be satisfied.

II. QUESTIONS TYPICALLY EVALUATED DIFFERENTLY FOR WOMEN THAN MEN:

PROTECTED CLASS	INAPPROPRIATE INQUIRIES	COMMENTS	APPROPRIATE INQUIRIES
Sex	Number of children under 18? What kind of child care arrangements have you made?	These questions are usually asked to find out if an applicant will be tardy or absent from work too often. However, they are usually evaluated differently for women than men. Employers usually do not assume men with young children will be poor employees. Employers likewise may not assume that women with young children will be undependable.	Did you have any tardiness problems with your employers? May I confirm that answer?
Race	Have you ever been arrested?	Since minority group members are arrested of crimes at a significantly higher rate than non-minority people, these inquiries can exclude minorities from job opportunities more often than non-minorities. Asking for arrest records is highly questionable, since an arrest is not in itself an indicator of guilt.	Have you ever been convicted of a felony? What felony and jurisdiction? (Note: you should not use a "yes" answer as an automatic screening tool. Investigate job relatedness). Also, check state laws.
Race	Do you own your own home?	This question may also tend to exclude people from minority groups where they do not own homes at the same proportion as non-minority people. Home ownership is not an indicator of a person's ability to do the job.	What is your permanent address?
Race/Sex	Request for credit information.	Women and minorities have been denied credit at a higher rate than non-minority men. Therefore, this question could have a disproportionate impact on women and minorities. It would be difficult to show knowing the applicant's credit history was necessary to determine that the applicant was able to perform the duties of the job.	It is not recommended that any indirect questions regarding credit information or garnishment be asked. Special disclosure obligations apply under the Fair Credit Reporting Act.
Sex/National origin	What is you height? Weight?	Height and weight standards that exclude women and people of certain national origin groups can be discriminatory unless the employer can show a strong necessity for the standard, and that there is no acceptable alternative for the employer.	It is not recommended that any indirect questions regarding height or weight be asked.

## **Exhibit 5.9 – Sample Interview Evaluation Form**

### **INTERVIEW EVALUATION FORM**

Interviewer's impression is that applicant is:

Unsatisfactory - does not possess the knowledge, skill, or ability in a sufficient degree to expect satisfactory job performance.

Marginal - possesses a sufficient degree of knowledge, skill, or ability to expect minimally satisfactory job performance.

Satisfactory - possesses a sufficient degree of knowledge, skill, or ability to expect satisfactory job performance better than minimally acceptable but not superior.

Good - possess a sufficient degree of knowledge, skill, or ability to expect satisfactory job performance which is significantly better than minimally acceptable and is clearly superior to that of most satisfactory applicants.

Excellent - possesses a degree of the knowledge, skill, or ability which is clearly expected to result in satisfactory job performance far above the basic requirement of the position.

Ranking Values: 1=Unsatisfactory 2=Marginal 3=Satisfactory 4=Good  
5=Excellent

Position for which you are interviewing:

Applicant's name:

Questions Rating Factor (*List knowledge, skill or ability of job-related factor that is assessed*)

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.

14.

15.

**TOTAL SCORE:**

**OVERALL ASSESSMENT:**      Unacceptable      Acceptable

**COMMENTS**

Rater's Signature:

Date :

## ***Exhibit 5.10a – Example of a Detailed Job Offer Letter***

### **District Letterhead**

Date \_\_\_\_\_

New Hire Name \_\_\_\_\_  
Address \_\_\_\_\_

Dear \_\_\_\_\_,

Congratulations! This letter is to confirm that you have accepted the position as \_\_\_\_\_ for the \_\_\_\_\_ Soil and Water Conservation District as of \_\_\_\_\_, 200?. You will be stationed out of the \_\_\_\_\_ Soil and Water Conservation District's office located at \_\_\_\_\_. As was previously discussed on the telephone with me, you will start work on (date) at 9:00am to fill out all the necessary paper work, meet with staff, and to begin to familiarize yourself with the office.

Some of the following items were mentioned in the position description and some were not, so I have listed them below for clarification purposes.

**Salary.** Your full-time salary will be \$\_\_\_\_\_.00 per month to start and you will be paid once a month on the last working day of each month. We normally do not do salary draws during the month, but if a draw is necessary, we would provide one to you.

**Position Classification.** The \_\_\_\_\_ position is classified as non-exempt and employment is considered "at will" and may be terminated by the District at any time during the course of employment.

**Introductory Period.** You will begin an introductory period of six (6) months commencing with your first day of employment. During this evaluation period, you and the District will have an opportunity to determine whether further employment with the District is appropriate. The employment relationship can be terminated by you or the District at any time during the introductory period for any reason. You will be evaluated at the end of your six-month introductory period.

**Performance Evaluation.** Once you have completed your six-month introductory period, your work performance will be evaluated by the District Manager. Based upon the outcome of that evaluation, the District Manager could make a recommendation to the board to hire you on as a regular employee of the District, making you then eligible for the benefits.

**Benefits.** Once you have successfully completed your six-month introductory period you will be credited with \_\_\_\_\_ hours each of sick and annual leave. The rate at which you accrue leave is \_\_\_\_\_ hours of sick leave and \_\_\_\_\_ hours of annual leave per month. You can begin to use either types of leave once they have been credited to your payroll account and you have successfully completed your six-month introductory period. Should you separate from the District anytime after you've completed your six-month introductory period, your accrued sick leave hours will

not be paid out to you but any remaining unused annual leave will be paid to you upon your departure. We do offer health insurance coverage that includes, medical, dental, vision and prescriptions and that again starts the following month after your six-month introductory period ends. The District pays 100% of the insurance premium for each employee. Employees wishing to cover their dependents must pay for that coverage out of their monthly paycheck.

The District also pays for a \$\_\_\_\_\_ life insurance policy for each employee which will start the next month following the successful completion of your six-month introductory period. The District has its own retirement program that includes a 457 Deferred Compensation Plan for all employees to participate in and then the Employer Deferred Compensation Matching Program where the District contributes monthly to match what employees contribute up to a maximum of 3%. The retirement program will again start after you've successfully completed your six-month introductory period and will be explained to you in more detail at that time.

The District follows the Federal holiday schedule. And as a bonus, the District also allows each employee one personal day off per year starting July 1<sup>st</sup> of each year. The personal day must be taken sometime during a 12-month period ending June 30<sup>th</sup> of the following year. If an employee does not use his or her personal day during that 12 month time period it will not be paid out to the employee or carried over into the next fiscal year. Employees are immediately eligible to receive holiday pay and do not have to wait until their six-month introductory period ends. Employees should take the holiday off when it occurs and usually cannot exchange it for another day unless approved by either one of the district managers.

**Work Hours.** Your normal work schedule starting \_\_\_\_\_, 2005 will be 40 hours a week (or full-time) and will be Monday through Friday with a half hour for lunch. You will need to discuss with \_\_\_\_\_, Manager what your work hours will actually be as we offer a couple of different start and end times (i.e. 8:00am to 4:30pm or 8:30am to 5:00pm) with normally a half hour for lunch. You may bring your own lunch, as we do have a lunchroom with a refrigerator and microwave, or you may leave the office to purchase a lunch.

We also try to hold our employees to only working 40 hours a week, but sometimes that is not always possible. When you must work overtime and you have exceeded 40 hours in one week, the District will allow you to then take time off, with approval from either manager, at your own discretion. Your position is classified as non-exempt which means that we allow you to accrue 1 1/2 hours of credit leave for every 1 hour of overtime worked over 40 hours and that you are not to exceed a \_\_\_ hours total of accrued credit leave at the end of each month. It is also important for you to keep a consistent work schedule, though there will be times when you may need to leave early, come in late or take a day off. We just ask that you let either one of the managers know as well as others in the office of any changes in your hours, so that they can if necessary, adjust their schedules.

**Supervision and Guidance.** \_\_\_\_\_, Manager will be your immediate supervisor but from time to time \_\_\_\_\_, Manager may also supervise you. Guidance from the District Board or District Director(s) will occur at Board Meetings or through the District Managers from the District Board. You will also need, at times, to prioritize your work in order to meet deadlines. If deadlines can not be met, you will advise the \_\_\_\_\_ Manager (or the \_\_\_\_\_ Manager in the absence of the \_\_\_\_\_ Manager) who will then determine what needs to be done.

**Vehicle.** The District has vehicles available for you to use for field work or when District related business needs to be done. There may be times though, when there is not a District vehicle

available, that you may need to use your own car. The District will reimburse you for mileage at the current state rate of \_\_\_\_ cents per mile.

**Parking.** Parking is on a first-come basis and employees may park on three sides of the building. They are located \_\_\_\_\_. Since we have had instances in the past of vandalism and items stolen from our District vehicles, we ask that you do not leave valuables in your car in plain view and to always lock your vehicle while you are at work.

**Office Equipment and Supplies.** The District will provide you with a desk, computer, telephone and basic office supplies, but you if need anything in particular to help you do your job better, we are open to purchasing it for you. The Service Center has a fax and two copy machines for taking care of daily business items but there are some restrictions on what these items can or should be used for. We also ask that if you need to use the District's telephone to make local, personal phone calls that you please do it during your breaks or lunch time and to also limit the amount of personal calls you receive during working hours. We also ask that you do not use or have your cell phone on during working hours (but you may check it during breaks or at lunch time) unless you have a serious family matter or an emergency situation where you would need to be available at all times for someone to reach you. Also your work email address is not for personal use but only to conduct District or \_\_\_\_\_ - related business.

Well, I think I've covered almost everything but I'm sure you will have more questions after you start on \_\_\_\_\_(day), \_\_\_\_\_, 2005. Everyone in the office is looking forward to working with you. Again, congratulations!

Sincerely,

\_\_\_\_\_  
District Manager

**Exhibit 5.10b – Example of a Minimal Data Job Offer Letter**

**District Letterhead**

Date

Name  
Address

Dear Name:

The \_\_\_\_\_ Soil and Water Conservation District is pleased to offer you the \_\_\_\_\_ position. The following terms are being offered:

Employment period: January 4, 20\_\_ to September 30, 20\_\_  
Position: Exempt, salaried position  
Salary: \$\_\_\_\_\_ annually  
Benefits: Health benefits beginning \_\_\_\_\_, 20\_\_  
Expenses: Mileage @ \_\_\_\_\_ per mile, supplies, and phone charges

Other terms of employment with the \_\_\_\_\_ Soil and Water Conservation District are covered in the Personnel Policies of the \_\_\_\_\_ Soil and Water Conservation District. We anticipate there will be future funding for this position, but we have no guarantee of funding after September 30, 20\_\_. Please feel free to call me and discuss this offer or any other terms of employment you wish to know about.

To accept this position, contact \_\_\_\_\_ at the \_\_\_\_\_ Soil and Water Conservation District at \_\_\_\_-\_\_\_\_-\_\_\_\_\_.

Sincerely,

\_\_\_\_\_  
Name  
Title

**Exhibit 5.11 – Sample Not Hire Letter**

## District Letterhead

January 1, 2004

Joe Super Worker  
123 Conservation Avenue  
Clean Water, Oregon 54321

Dear Mr. Worker:

Thank you for applying for the \_\_\_\_\_ position with the \_\_\_\_\_ Soil and Water Conservation District. We had many qualified applicants making the decision difficult. The position has been offered to and accepted by another applicant.

We hope that you will continue to show an interest in future conservation opportunities. Best wishes in your employment search.

Sincerely,

Mary Smith, Chair  
\_\_\_\_\_ Soil and Water Conservation District

The \_\_\_\_\_ SWCD is an equal opportunity employer and service provider.

**Hints:**

- Be brief and to the point.
- Be courteous and thoughtful.
- Do not explain or justify your decision.

## **Exhibit 5.12 – Checklist for Recruitment and Hiring Employees**

**ITEM COMPLETED**

### **Job Announcement**

1. Prepare job announcement. \_\_\_\_\_
2. Advertise vacant position. \_\_\_\_\_
3. Notify other SWCDs \_\_\_\_\_
4. Notify \_\_\_\_\_
5. Contact district cooperators, colleagues, and current employees \_\_\_\_\_
6. Contact colleges, schools, and Vo-Techs, etc. \_\_\_\_\_
7. Contact Oregon Workforce Development. \_\_\_\_\_
8. Put advertisements in the newspaper and on the radio. \_\_\_\_\_
9. Mailings to individuals who have resumes on file. \_\_\_\_\_

### **Interview**

1. Select an interview team. \_\_\_\_\_
2. Review job description. \_\_\_\_\_
3. Screen applications to select finalists based on qualifications. \_\_\_\_\_
4. Schedule interviews with selected finalists. \_\_\_\_\_
  - a. Time \_\_\_\_\_
  - b. Location \_\_\_\_\_
  - c. Have interviewees bring writing samples to interview \_\_\_\_\_
  - d. Determine if applicant has any special needs to be considered in selecting a location or for communicating during the interview. \_\_\_\_\_
5. Prepare interview questions, score sheet and interview format. \_\_\_\_\_
6. Interview, including follow-up and/or second interview. \_\_\_\_\_
7. Check references. \_\_\_\_\_
8. Check credit, driving, and criminal history records, as applicable. \_\_\_\_\_
9. Send Confirmation of Acceptance Letter. \_\_\_\_\_
10. Send Not Hire Letter(s) \_\_\_\_\_
11. Establish employee personnel file. \_\_\_\_\_

**Exhibit 5.13 – Applicant Tracking Form**

**APPLICANT TRACKING FORM**

Our district conducts business with governmental agencies which require certain information, such as ethnic background of employees. The information is to confirm our district is an equal opportunity employer and meets certain government EEOC regulations. These records are stored in a separate location from your application. The information is for data purposes only, and voluntary on your part.

POSITION APPLIED FOR: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME: \_\_\_\_\_ GENDER: MALE \_\_\_\_\_  
FEMALE \_\_\_\_\_

CITY OF RESIDENCE: \_\_\_\_\_ AGE: \_\_\_\_\_

**I CONSIDER MYSELF A MEMBER OF THE FOLLOWING RACIAL/ETHNIC GROUP (CHECK ONE ONLY):**

- AMERICAN INDIAN/ALASKAN NATIVE
- ASIAN/PACIFIC ISLANDER
- AFRICAN AMERICAN
- CAUCASIAN
- HISPANIC
- OTHER (Please Identify)

IF YOU HAVE A DISABILITY WHICH WILL IMPAIR YOUR ABILITY TO PERFORM IN THE SELECTION PROCESS, YOU ARE RESPONSIBLE TO NOTIFY THE DISTRICT TO ARRANGE FOR REASONABLE ACCOMMODATION.

IF YOU FEEL YOU HAVE BEEN TREATED UNFAIRLY OR DISCRIMINATED AGAINST BECAUSE OF RACE, COLOR, NATIONAL ORIGIN, GENDER, AGE OR DISABILITY, PLEASE CONTACT DISTRICT BOARD CHAIR.

## **Exhibit 5.14 – Confidential Post Job Offer/Pre-Placement Medical Questionnaire**

NOTE: This questionnaire is a sample only. It must be tailored to your organization and carefully utilized by trained personnel. Employers who are interested in using this approach are encouraged to seek employment counsel.

*(To be completed by all persons offered positions as \_\_\_\_\_ before they start work.)*

Job offers are conditioned upon completion of this Medical Questionnaire. This Questionnaire is used to assist us in hiring employees to positions suited to any physical or medical limitations they may have and to establish basic information regarding your physical condition before you begin working. This information will be maintained in a confidential medical file and will not be used to deny any employment opportunities, except in accordance with applicable law.

In the event your response to these questions raises concerns on our part that you cannot safely perform an essential function of the job you have been conditionally offered, we reserve the right to require medical verification of your ability to perform these functions before you are allowed to begin working. We also reserve the right to withdraw your job offer if further inquiry reveals that you cannot safely perform the essential functions of that job. If you qualify as a “disabled person,” this determination will be made after any reasonable accommodation obligations have been satisfied.

**Please complete this questionnaire in your own handwriting. Sign and date it please. Check “Yes” or “No” for each question. Incomplete or unsigned questionnaires will result in withdrawal of your employment offer. For each “yes” answer, explain your answer at the end of the questionnaire. If, for any reason, you are uncertain of an answer, indicate so and briefly explain why. Do not complete this form unless you have already been offered employment, but have not yet started work.**

A. As a result of injury, illness or other cause, do you have any impairment of:

1. Hands that limit dexterity or your ability to maintain a strong grip or hold objects firmly?  
YES [ ] NO [ ]
2. Arm, wrist, back, shoulder or other problems which limits normal range of motion, full use or strength of your upper extremities?  
YES [ ] NO [ ]
3. Ankle, knee, foot, legs, or other problems which limit normal range of motion or your ability to stand, walk, squat, kneel, climb stairs, getting into and out of vehicles or equipment, or walk on uneven surfaces?  
YES [ ] NO [ ]
4. The neck or back which interferes with bending or rotation of your neck, or which interferes with your ability to hold your head in fixed positions for prolonged periods of time?  
YES [ ] NO [ ]

5. The back which interferes with your ability to bend, twist or flex your back frequently?  
YES [ ] NO [ ]
6. The back which interferes with your ability to lift or carry objects on a repetitive basis?  
YES [ ] NO [ ]
7. The joints resulting from stiff, painful or swollen joints or broken bones?  
YES [ ] NO [ ]
8. Vision in either eye that interferes with your ability to read, see at a distance, distinguish colors, or see in dim light?  
YES [ ] NO [ ]
9. Hearing that interferes with your ability to understand spoken words, hear safety alarms or sirens, or requires you to avoid exposure to excessive noise?  
YES [ ] NO [ ]

B. As a result of injury, illness or other cause, do you have any impairment which may:

1. Affect your equilibrium or ability to maintain your balance?  
YES [ ] NO [ ]
2. Alter your normal state of consciousness or cause you to become unconscious?  
YES [ ] NO [ ]
3. Make it dangerous for you to work at unguarded hazardous heights or around moving machinery?  
YES [ ] NO [ ]
4. Prohibit you from driving licensed company vehicles on public highways?  
YES [ ] NO [ ]
5. Prohibit you from working alone, at heights or in confined spaces?  
YES [ ] NO [ ]

C. Have you ever:

1. Had fainting spells, loss of consciousness, seizures, or epilepsy?  
YES [ ] NO [ ]
2. Been treated for shortness of breath, emphysema, or other respiratory problems?  
YES [ ] NO [ ]
3. Had a heart attack, stroke, other heart or circulatory system disease or failure, or high or low blood pressure?  
YES [ ] NO [ ]

4. Had an illness which affected your nervous system?  
 YES [ ] NO [ ]
5. Had any kinds of back problems or any history of back pains?  
 YES [ ] NO [ ]
6. Had back surgery or been treated for a back condition?  
 YES [ ] NO [ ]
7. Had a rupture or hernia?  
 YES [ ] NO [ ]
8. Received a permanent disability award (including any amount of permanent partial disability) for a job or non-job related accident or illness? (Note: We are not interested in knowing whether you have ever had a temporary disability or whether you have ever applied for workers' compensation. The information requested applies only to *permanent* restrictions.) YES [ ] NO [ ]
9. Been exposed to hazardous materials or radioactive substances?  
 YES [ ] NO [ ]
- D. Are you:
1. Currently taking any prescribed medication which has side effects that could cause drowsiness or affect your ability to safely perform job duties? (Note: We are not interested in knowing whether you are taking prescribed medication that does not cause drowsiness or other side effects that could affect job safety.)  
 YES [ ] NO [ ]
2. Allergic to inhalants (dust, etc.), fumes, solvents, gasoline products, or other substances commonly found in the work place in our industry?  
 YES [ ] NO [ ]
- E. For first aid purposes:
1. Do you have any medical condition that we should know about in order to properly administer first aid to you? (For example, a floating sternum that would cause us to avoid giving CPR; allergies to common first aid medication, etc.)  
 YES [ ] NO [ ]
2. If you are a diabetic or have another medical condition that currently requires special treatment from the Company, please advise. (For example, if you are required to be off work to undergo kidney dialysis, etc.)  
 YES [ ] NO [ ]
- F. Do you have any limitations on your ability to perform the duties or the job you have been conditionally offered? (See attached job description.)  
 YES [ ] NO [ ]



## ***Exhibit 5.15 – Pre-Employment Drug Screening Policy***

### **Introduction**

\_\_\_\_\_ is committed to establishing a safe working environment for its employees. We are also committed to providing high standards of employee performance, productivity, and reliability. To those ends, we have established a Pre-Employment Drug Screening Policy that will become effective \_\_\_\_\_.

All applicants who are offered employment after that date will be required to submit to a post-offer/pre-work drug screening test as a condition of employment.

In the event you are not prepared to consent to a pre-employment drug screening drug test as a condition of employment by signing below, your employment application will be rejected. In the unlikely event you are required to begin working prior to receipt of the test results, it is understood and agreed that your employment will be on a temporary basis and will automatically end if you test positive or do not otherwise promptly comply with all terms of this Policy.

### **Procedure**

The procedure for submitting to a pre-employment drug test is as follows:

- \_\_\_\_\_ will direct you to the nearest collection facility. You must make an appointment and submit to a test within the time period designated by \_\_\_\_\_.
- You should arrive at the collection facility approximately 5 to 10 minutes prior to your scheduled appointment in order to complete the necessary paperwork. You must also bring a current driver's license or other photograph identification.
- You will be required to sign a consent form permitting the collection facility to collect a sample and conduct the test. In the event you refuse to sign the consent form or otherwise refuse to proceed with the test, you will be ineligible for employment.
- You will also be required to sign an authorization form permitting the collecting facility to disclose the laboratory results of your drug test to \_\_\_\_\_'s designated representative(s). In the event you refuse to sign the authorization, you will be ineligible for employment. Your test result will be kept confidential by \_\_\_\_\_, to the extent that we determine confidentiality is practicable.
- The collection facility will collect your urine sample. The collection is done in a controlled environment by trained medical personnel.

- If you test positive, submit a sample that has been diluted, altered, etc., or otherwise refuse to cooperate with the testing procedure, you will be ineligible for employment. If you feel your rejection for employment was unfair or based on an inaccurate test result, you may submit a written objection to \_\_\_\_\_ at \_\_\_\_\_ within ten (10) days of the date you are informed of your ineligibility for employment. The objection must contain information explaining why you feel your rejection from employment was unfair or based on an inaccurate test result. In the event your pre-employment drug test is positive for a legally obtainable drug, you may be required to submit documentation verifying your lawful use of the drug.

By signing below, I acknowledge that I have received a copy of the Pre-Employment Drug Screening Policy and that I have carefully read, understand and accept the terms of the Pre-Employment Drug Screening Policy.

\_\_\_\_\_  
Applicant [print name]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Applicant's Signature

## Chapter 6 – Wages, Taxes, and Overtime

An employee compensation package consists of both wages and benefits. For comparability purposes, the value of benefits should be included with the wages when discussing compensation. In designing a compensation package, the directors should make every effort to provide employees with a fair and equitable return for their work. The following are only guidelines.

### ***Determining Compensation***

The hourly wage or salary for a district employee should be set by the district directors, based on the position, experience, and qualifications of the employee. Districts should make a continuing effort to assess the pay and benefits prevalent in their communities. This should be done annually. The compensation of district employees should be set at a level comparable with other positions, having similar duties and responsibilities, located within the respective county or basin.

### ***Wage Increases***

#### **Merit Raises**

All wage increases, except cost-of-living increases, should be based only on the quantity and quality of work performed. Basing wage increases on such items as longevity with the district should be avoided. A merit personnel system by definition means the wage of each employee is based on the responsibility and difficulty accorded to the position and to the merit of the individual in that position, as evidenced by a job-related performance evaluation. A merit wage increase may also be given when required training has been completed or other milestones, such as certification or licensure, have been achieved.

#### **Cost-of-Living Increases**

Cost-of-living increases are given by some employers as a separate increase designation and are normally based on the expenses increase for the previous year. This can be handled in one of two methods.

1. The local wage survey conducted on a regular basis will usually account for any cost-of-living increase in the area.
2. The usual method is to choose a cost-of-living increase percentage figure. Such figures can be obtained from your local office of the Oregon Employment Department, the local Chamber of Commerce, a business administration school in a local college or university, or adjacent districts. If a cost-of-living increase is warranted, it should apply “across-the-board” to all wage levels.

### ***Promotions***

Do not use promotion as a reward for time in service. Evaluate candidates for promotion based on the skill set for the position they are seeking or which you

desire them to have. Select candidates for promotion, in particular promotions to supervisory or management positions, using the same care and techniques used to hire employees.

### ***Awards and Recognition***

An awards program can be established that can improve district operations and provide recognition to worthy employees. Such a program, if properly conducted, can have the following benefits:

- Employees appreciate receiving recognition for their contributions.
- Employees are encouraged to make continued significant contributions.
- Morale and productivity are enhanced.
- The district receives favorable publicity through employee recognition.

An awards program can recognize length of service, superior performance, employee suggestions that improve work methods or increase productivity, heroism, and professional accomplishment. The award may be:

- A letter of commendation.
- A certificate of appreciation.
- A plaque, medal, jewelry, or similar form of recognition.
- Cash.

Awards should be made at appropriate ceremonies presided over by the District board. The awards presentation should be widely publicized in newsletters, press releases and by other means.

### ***Workers' Compensation Insurance [Mandatory]***

Workers' Compensation Insurance is required by state law. It pays benefits to qualified workers or their beneficiaries if injured or killed on the job. District employees for SWCDs in Oregon are included in the state of Oregon workers' compensation insurance.

Prior approval is still needed or workers' compensation will not pay for the visit or any needed prescriptions or treatments. However, in case of an emergency, the employee should get treatment first and then take care of the paperwork. Or, if an injury happens before or after normal office hours (e.g., 8:00 a.m. – 4:30 pm.), the employee should seek treatment first and take care of any necessary paperwork as soon as possible.

### ***Key Issues for Employee Wages and Classifications***

Key issues the district needs to understand and research before creating district policies include:

- Employee classification: Is the employee
  - Full-time [works a minimum of 40 hours a week on a continuing basis]
  - Part-time [works less than 40 hours a week on a regular basis]
  - Temporary [holding a job of limited duration arising out of special projects, abnormal work load, emergencies, or limited funding]
- Exempt: OAR 839-001-0130(1) states that the exempt status of an employee is determined by the *type of work the individual performs and the location of the work performed in one day*. Exempt employees may include:
  - Executives, managers, or supervisors - ORS 653.020(3) and OAR 839-020-0005
  - Administrative employees – ORS 653.020(3) and OAR 839-020-0005
  - Professional Employees
- Non-exempt: Is the position eligible for overtime and/or compensatory time?

**NOTE:** Because of the complexity of determining the exempt or non-exempt status of positions, districts should work with BOLI to ensure each job position is in the right classification for the actual work performed.

***When is “Work” Really Work?***

Work requested or required is considered work time. Work not requested, but suffered or permitted is considered work time.

Work performed for the employer but away from the employer's premises or job site is considered work time. If the employer knows or has reason to believe that work is being performed, the time spent must be counted as hours worked.

It is the duty of the employer to exercise control and see that the work is not performed if it does not want the work to be performed. The mere promulgation of a policy against such work is not enough.

In brief, the board is responsible to define the number of hours both exempt and non-exempt employees may work. Districts may limit the workweek of a full-time employee to forty (40) hours, thus avoiding financial liability for overtime pay. Time limitations must be defined clearly in the employee’s position description, work plan, and the district’s policy and procedures.

**CAUTION:** OAR 839-020-0030(2)(a) states:

**Definitions:**

"Work week" means any seven (7) consecutive twenty-four (24) hour period as determined by the employer. *The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of this rule.*

According to BOLI, paying on a “salary basis” does not automatically make an employee exempt. Paying a salary does not relieve the overtime obligation. In addition, salaried, non-exempt employees may be “docked” for actual amounts of time not worked one full day or longer.

## ***Overtime [when authorized]***

All overtime requires prior director or supervisor approval. However, authorization of overtime is not recommended. The rate of compensatory time for hours worked in a week beyond 40 is 1½ times the overtime hours worked as required by the Fair Labor Standards Act. See discussion on “comp time” below.

If the district authorizes overtime hours for an employee, the district may choose to offer either compensatory time or overtime wages at a rate of one and one-half (1.5) times the employee’s regular rate of pay for hours in excess of 40 in a workweek. The issue of compensatory time and overtime pay should be clearly defined in the district’s policy and procedures **prior to** the time the district authorizes overtime.

The reason for establishing policies is to make sure both the district board and employees understand what is being provided by the district and what employees are legally entitled to under the state wage and hour law.

## ***Key Points about Overtime and Compensatory Time***

It is not illegal to request an employee work overtime, as long as the employee is appropriately compensated. District policies should be established that outline overtime hours and appropriate compensation.

The district may require the employee to adjust the work schedule to a maximum of 40 hours a week. For instance, if the employee attends a night meeting on Tuesday, they may be required to end their work week at 1:00 p.m. on Friday. The district, however, cannot change the beginning of the workweek to avoid paying overtime.

Overtime is determined entirely by the number of hours in a workweek. It does not apply to a single day, such as working more than eight hours on one day. ORS 279.340 requires a forty-hour workweek for non-exempt employees before overtime must be compensated.

Federal law places a maximum number of accrued compensatory hours to be 240 hours (or a total of 160 actual hours worked). Each district may establish its own policy setting a lower limit on the number of hours an employee may accrue. Districts should be aware that any extra hours worked over the cap of the accrued comp time must be paid in cash to the employee. Districts, therefore, should budget for accrued compensatory time/overtime just like other payroll liabilities.

Employees must be permitted to use comp time within a “reasonable period.” The district’s policies may reflect that comp time can be carried for a specific amount of time (i.e., six months), before the employee loses the option of using comp time, but the accrued time must then be “cashed out” to the employee.

The employee's direct supervisor or employer authorizes use of comp time. To avoid confusion, the use of comp time should be well defined in district policy. In the absence of district policy, it is standard practice for the use of comp time to be authorized by the employee's supervisor.

An employee may request to receive overtime, instead of compensatory time, but it is still the district's prerogative. In addition, at termination, an employer must pay any accrued comp time to the employee. Both of these options are to be paid at the regular rate earned by the employee *at the time the employee receives payment*, not at the rate at which the comp time was accrued [if the amounts differ].

In the final analysis, the best option to manage overtime costs or excessive use of compensatory time is to manage the work carefully. The supervisor should be able to know if an employee is getting close to the 40-hour maximum, and adjust work load. The supervisor should have the authority to send the employee home or cancel all work until the next workweek starts.

# Chapter 7 – Determining Leave and Benefits

Employee's benefits include all compensation received by the employee in excess of the base wage. Benefits are available in a broad range. Some are mandatory and some are optional. In deciding what benefits to provide, custom and competition should be considered. Few employees realize the advantage of these benefits. Therefore, these factors should be stressed when hiring or when discussing compensation with employees.

## ***Mandatory Leaves***

### **Court Leave/Jury Duty**

Court Leave/Jury Duty must be offered as prescribed by law. The leave time may or may not be a paid leave and is available to all employees. Prior notice of court leave (jury duty) is to be provided to the supervisor. Usually an employee returns to their same position with no loss in benefits or employment credit, as in annual leave; however, extended jury duty may result in a need to temporarily fill that position.

In general, employers are not obligated to pay wages during jury duty service unless they have promised such wages as a fringe benefit. However, if your employee on jury duty is salaried and exempt, you must pay the full weekly salary if the employee performs any work during the workweek. The employee may keep expense reimbursement.

### **Crime Victims' Leave**

NOTE: This policy applies to Oregon employers of six or more persons for 20 or more weeks in the calendar year in which the employee takes the leave or in the immediately preceding year.

If an employee or a member of his/her immediate family suffers financial, social, psychological, or physical harm as a result of a personal felony, he or she may be entitled to take protected leave from work to attend criminal proceedings.

### **Eligibility**

Employees will be eligible to take crime victim's leave if they have worked an average of more than 25 hours per week for the district for at least 180 days immediately before the leave would begin.

### **Length of Leave**

The amount and length of leave time the employee may take is limited to that which does not create significant difficulty and expense (undue hardship) to the district. If the district must limit the leave due to undue hardship, notify the prosecuting attorney in the criminal proceeding, who is required by law to notify the court. The court will then take the employee's work schedule into consideration when scheduling the criminal proceedings.

### **Request Procedure**

The employee must provide his/her manager or supervisor with reasonable notice of their intention to take crime victims' leave, and provide copies of any notices of

scheduled criminal proceedings received from a law enforcement agency. The district will treat such documentation as confidential information.

### Pay While on Leave

Crime victims' leave is unpaid; however eligible employees who take this type of leave may be required to use any accrued paid [vacation/sick/personal] time available to them.

### Status of Benefits

Benefits are not affected by crime victims' leave.

### Domestic Violence Leave

Employers with 6 or more employees must permit eligible employees to take reasonable unpaid leave to obtain services or treatment relating to domestic violence, sexual assault, or stalking. Employers are allowed to limit the amount of leave taken to the extent it causes an undue hardship to the business.

Employees may use accrued vacation or other paid time off during the leave. Employees are eligible if they have worked an average of 25 or more hours per week for a 180-day period before taking the leave.

### Military Leave

Military leave must be offered as prescribed by law. Persons employed for terms greater than six months and one day are entitled to receive payment for the first 30 days of Military Leave. Prior approval for military leave is to be requested from the appropriate individual. PTO may be debited for military leave only at the request of the employee. The district may differentiate between short leave (e.g. Reserve drills) and extended leave in regard to military leave being a paid leave or may prorate for part-time employees.

### Disability Leave

Both state and federal law require employers provide reasonable accommodation for individuals with disabilities, as long as that accommodation does not create an undue hardship for the employer. [See Chapter 2, pages 6-9 for additional information on ADA and accommodations. Also See BOLI's Civil Rights Laws Handbook.] Such accommodation may include a leave of absence to receive treatment for the disability.

Oregon does not provide a paid disability benefit. However, granting a leave without pay and holding an employees' job is sometimes a form of reasonable accommodation an employer must make.

Districts which have conditions that do not qualify as "disabilities" may also need to take medical leaves. The district policy should provide both a procedure for requesting such leave and a time limit for absences. The policy might include: "In addition to our regular sick leave benefits, the District provides long-term medical leave for up to {6 months, other time} with medical verification."

### **Leave for On-the-Job Injuries**

Employees who are injured on the job have certain reinstatement and reemployment rights, depending on the nature of their medical release that can last up to three years from the date of injury. A section in the policies should address the process for return to work. Oregon law allows returning injured workers seven calendar days from the date they are informed by their insurance carrier by regular and certified mail to notify the district their attending physician has released them for employment. [See Chapter 10]

### **OFLA Leave**

For private or public Oregon employers with 25 or more employees, Oregon Family Leave Act applies.

OFLA cannot run concurrently with a workers' compensation absence.

Eligible employees may use any accrued paid sick leave they may have while on OFLA leave, even if the employer's policy would not otherwise allow them to do so.

OFLA leave has been extended to cover grandparents and grandchildren as eligible family members; however, FMLA does not cover leave for grandparent or grandchildren's qualifying serious health conditions. This may complicate employer tracking of an employee's leave taken.

OFLA retaliation claims are now available as a legal cause of action that employees may pursue for retaliation by an employer because he/she has inquired about or submitted a request for OFLA leave.

### **FMLA Leave**

All "public employers / agencies" [including districts as subdivisions of state government], without regard to the number of employees they have, are covered by the Federal Family and Medical Leave Act [FMLA]. The district must post the FMLA/DOL rights poster. [29 CFR 825.104]

**HOWEVER, not all employees of public employers are eligible for FMLA.** Each employee must:

- Work at a worksite that employs 50+ employees within a 75-mile radius [which by virtue of definition would exclude every conservation district employee at this time];
- Have worked at least 1,250 hours in the 12 months prior to commencement of the leave; and
- Have been employed at least 12 months for a single covered employer.

Nevertheless, the district can offer to cover employees under FMLA [even though it is not obligated to do so]. Districts can always offer more than the law requires.

The Department of Labor has revised its FMLA forms (WH380, Medical Certification Form, WH-381, Request for Leave Form). The revised forms may be used through 2010.

See Disability Leave section prior for other leave options. [See Exhibit 7.1 for FMLA and 7.2 for OFLA/FMLA Leave language and forms].

## ***Benefits Which Are “Optional”***

The benefits discussed in the following pages are a compilation of benefits offered by a variety of governmental jurisdictions and private industries. They are provided only to show what is available and what should be considered in setting policy. The listing does not imply any district should provide all of these benefits to its employees. Optional benefits should be clearly determined prior to hiring an employee. Be certain to budget for this expense.

The choice to offer or not offer optional leave, the rules of accrual, and the rules of use are entirely matters of employer policy.

Fringe benefits for employees may include forms of compensation such as vacation pay, sick leave, holiday pay, personal time off [PTO], bonuses, severance pay, and pensions. Wage claims and other legal actions frequently arise because employers and employees understand benefits policies differently. In order to avoid such disputes, districts are advised to create clear and precise policies.

Whatever benefits are offered, the policy must make it very clear:

- What the benefit is.
- Who is entitled to the benefit.
- How it is earned.
- How much can be accrued, over how long a period of time, before it must be used, or will be lost. [For some benefits like vacation, sick leave, or PTO.]
- When it can be taken? By what time must some be used or lost?
- What authorizations or reporting are required to schedule it?
- Are leaves paid or unpaid?
- Are unused leaves “cashed out” at separation?

While there is no legal requirement for employers to offer “optional” benefits, once promised, they may not be arbitrarily withheld.

The district must decide who receives benefits. One major question is how many hours an employee must work to be eligible. Civil rights and wage laws apply to all employees. The law does not define “full-time” or “part-time.” The district can thus set any hour limits it chooses for when employees are eligible for most benefits, such as vacation, sick leave, group health insurance, etc. Employers often pro-rate the benefits based on hours worked for those employees working less than full time.

Oregon allows a “use it or lose it” practice. The district can define:

1. How many leave hours can be carried over from one year to the next or not at all,
2. A maximum of hours accrued after which no more hours can be accrued until some are used for that benefit, and

3. A time period within which some time must be used. For example, since annual leave is offered as a time for rest and recuperation, studies show the best results are achieved when employees take at least one full week of vacation per year in a block of days [five consecutive work days, not one day per week during five different weeks]. The district can also decide that certain leaves must be used up within a specified time period or lost.

### **Vacation Time**

Districts should recognize every employee needs to take vacation time off each year from all work-related activities for rest and renewal. It works best when taken in one week blocks of time or longer to ensure sufficient renewal time.

The district has the right to decide if and when the employee can go on vacation, based on staffing needs, employee's workload, other employee vacation requests, and the district's needs – as long as the employee is given reasonable time during which to use the vacation time.

As stated above, the district has a series of questions to answer about each optional leave. The following questions use "vacation leave" to illustrate.

- Will the district grant vacation time to employees? No law says you have to.
- If vacation time is an approved paid leave, will the district pay for unused vacation time at termination? If yes, do you pay for vacation time not used when the separation is voluntary? Or when the termination is involuntary? No law says you have to do either.
- Will the district grant vacation pay for temporary or "part-time" workers? The district may pro-rate the leaves based on hours worked, or to not grant vacation pay to part-time or temporary employees.
- How should vacation benefits be accrued? There are many options.
  1. During the orientation period? If so can it be used during the period?
  2. So many hours earned each month?
  3. So many hours earned each pay period?
  4. So many days per year of employment. For example, five days for the first year, 10 days for years 2-4; 15 days for years 5-14; 20 days for 15 years and thereafter.
  5. Not when the employee is observing other paid or unpaid leave time?
- When can an employee take vacation time? Options include:
  1. During the orientation period?
  2. Only after the orientation period is completed and the employee is granted "regular" classification status?
  3. Only after the first year?
  4. At least one week during each year?
  5. Others?
- It is OK to require the employee take vacation within a specified time following accrual? Districts can encourage employees to take vacation on an annual basis. Most personnel consultants recommend vacation time not accrue more than 18 months before some is used.

- If a holiday occurs during a vacation, the general practice is to grant one additional day of vacation, to be taken at a time approved in advance by the supervisor.

Examples of common practices regarding vacation leave are stated in the two paragraphs below.

Vacation time is usually paid in the final paycheck of any employee leaving the district. But if the district pays vacation time not used, is it pro-rated if the employee leaves before one year?

Some employers grant days of vacation time at the beginning of each year on the hire date [the number of days depending on the length of employment]. Employees are expected to use those days before the end of that 12-month period. Unused vacation time is not carried over to the next year, nor paid out at year end or termination, except for employees with five years continuous employment and who are not terminated for policy violations.

Whether you pay for leave benefits at termination should be defined in your policies, any agreements you have made with the employee, and your past practices with other departing workers. ORS 652.140 states "all wages earned and unpaid" are due at termination, and this includes compensation for benefits earned under your policies. If your vacation policy is ambiguous, or if your past practice was to cash out leave accruals, you should include the vacation pay in your employee's final paycheck. If an employee has a reasonable expectation of receiving unused vacation pay based on your representations and policies, a court would likely grant the employee's claim for unpaid wages and penalties.

### **Sick Leave**

Generally, sick leave is not regarded as a benefit that must be "cashed out" at termination. To avoid disputes in this area, clearly communicate your sick leave policy to employees.

Employees on family leave under the Oregon Family Leave Act (OFLA) and the federal Family and Medical Leave Act (FMLA) are entitled to use any accrued vacation time during their leave. During a parental leave (time off to care for a newborn baby), an employee is also entitled to use any accrued sick leave. Sick leave may be used during other types of family leave, when it is consistent with your sick leave policy. If an employee is eligible to use both vacation and sick leave during a family leave, you may choose (or specify in your policy) the order in which those accruals are to be used. When an employee uses FMLA leave, you must also continue any group health plan coverage during the leave. During an OFLA-only leave, insurance coverage need not be continued, but all benefits must be reinstated at prior levels immediately upon the employee's return.

Your policies need to identify under what circumstances paid sick leave is authorized. You might limit it to illness of only the employee, or for the employee to care for an ill family member.

The District can terminate an employee for excessive use of sick leave, as long as the absences are not legally protected under workers' compensation, disability, or family leave laws.

### **Requiring Medical Information and “Strings” on Using Sick Leave**

District policy can determine when and how employees may use paid sick leave, as long as it is applied in a non-discriminatory way. Generally, the district can request relevant information and even discipline employees for “unauthorized use of sick leave.”

Be aware of disability and leave laws that regulate medical inquiries, grant rights to certain employees to take time off, or may guarantee the right to use accrued paid leave.

Oregon and federal disability laws permit the district to make medical inquiries of employees as long as they are job-related and consistent with business. It is OK to inquire about “a pattern of absenteeism” when the circumstances are suspicious.

But the district must be careful what it asks for. Generally it is not appropriate to demand specific information about symptoms, diagnosis, prescriptions, or prognosis, unless a very definite business need to know exists. Oregon Family Leave Act has special provisions that must be followed.

### **Holidays**

The district is not required to give paid holidays at all. District policy determines whether you offer holidays, how many you offer, whether they are paid or unpaid, and at what rate you compensate employees for the time. The district can set rules about which employees are eligible for holiday pay; for example, only to full-time, regular employees with one year continuous employment.

If the district chooses to pay for holidays, the easiest method is to choose to observe the holidays granted for either state or federal employees. Their rules already cover what days can be recognized if the holiday falls on a weekend.

Just be sure your policies are clear about what holidays are paid or unpaid and how to handle holidays that fall on a weekend.

Holidays are not counted in the time for the workweek, so if an hourly employee works 47 hours in the workweek, but 8 hours were a holiday, the actual “work hours” are 39, and the employee is not due overtime pay. That holds true for sick leave, vacation days, or PTO as well. The only exception is if your district policies obligate you to count paid leave to compute if overtime pay has been earned. If you require the employee to work on a holiday, and that pushes the time into overtime, the district is obligated to pay time-and-one-half the regular rate for those hours.

### **Personal Time Off (PTO)**

Many employers offer general “personal leave” or “personal time off” that covers sick and annual leave. Other employers lump all non-mandatory leaves into PTO, including bereavement, holidays, etc.

Some employers choose to offer a fixed number of floating days during the year, which employees are permitted to use for personal reasons, illness, bereavement leave, inclement weather, study days, vacation, or holidays. It does not include time off for mandatory leaves, such as jury duty or military leave, or family medical leave, if the district has such a policy.

Accrual can be scheduled to start for all employees at the hire date or the beginning of the calendar year [fiscal year is possible but takes more time to manage]. For example, if the calendar year is chosen, the first year is pro-rated by the number of months left in the year. PTO starts on the first day of the month after hiring. So if the employee is hired in January, the PTO days would be the full annual amount for a new employee such as 18, 17 for 11 months, and sequentially down to 15, 13, 12, 10, 8, 7, 5, 3, 1, and if the employee is hired in December, zero days accrued in that year.

Annual accrual could then be up to 20 days per year for years 2 – 4 of employment; 25 days for years 5 – 9; and 30 days per year for 10 or more years continuous employment.

General regular part-time employees may be allocated PTO on a pro-rated basis. Temporary employees are not usually eligible. At separation, all PTO is lost.

**CRITICAL NOTE:** If the district uses PTO for vacation, sick, bereavement, etc. and records the leaves in QuickBooks, the bookkeeper must put in the amount of time to be accrued and the maximum that can be accrued under “sick leave,” since the district has to pay worker’s compensation on sick leave. So there is a trade-off: the district does not pay worker’s compensation for vacation time, so the district will pay slightly more worker’s compensation for the convenience of having fewer hassles and less recordkeeping to manage all the different leaves. QuickBooks does not allow any other way to do it, since you cannot change the programmed options in their payroll system.

Districts can offer different benefits to different employees, as long as the basis for benefit differences is not discriminatory. For instance, an employer can choose to offer different benefit packages to employees who perform different job duties, or can offer distinct benefits for employees based on the department or location in which they work. An employer may also offer greater benefits to management personnel than to regular employees. The benefits offered should not, however, be determined based on an employee’s age, race, gender, disability, or any other class protected under state or federal law.

All changes in the terms of existing benefits policies must be clearly communicated to employees, and if they are made prospectively, so that employees do not lose any benefits earned to date under the existing policies.

### **Unpaid Leave**

Regular employees may be granted an unpaid personal leave of absence under certain circumstances. A personal leave of absence is an approved period of time away from work for personal reasons that does not fall under the guidelines of the Family and Medical Leave Policy. A personal leave of absence is granted at the district’s discretion

and is normally granted to protect the length of service and benefit rights for an employee whose service might otherwise be terminated.

### Eligibility

The employee becomes eligible for a personal leave of absence after {six, twelve} months of service. If you want to take a personal leave of absence you must make arrangements with your supervisor.

### Length of Leave

The leave may be requested for any time over {30} days. A personal leave of absence starts on the first regular workday following the last day worked. The maximum leave allowed under this policy is {60 days, 90 days}.

### Request Procedure

The district policy might be that the employee submit a written request, using a Leave of Absence Request Form, at least one week (five working days) before time off that exceeds ten days, except in emergencies. Leave requests must include an expected date of return. If the employee does not return within three days of that date and no extension has been requested, the district may assume the employee has resigned.

### Pay While on Leave

Personal leaves of absence are without pay unless the employee decides to use any earned vacation hours during the leave and is otherwise eligible to use such hours.

### Status of Benefits

Insurance coverage will **not** be maintained for the employee while on a personal leave of absence. The employee may continue insurance coverage by paying the full premium by the first of each month. Benefits do not accrue during a leave of absence, but are retained at the same level.

### Reinstatement

The district will attempt to arrange employment for individuals returning from a personal leave of absence, but no guarantees are made. While on a personal leave of absence, the employee is required to check in with his/her supervisor on a regular basis to inform them of their status and to notify them of any change in personal data.

Any employee returning from a medical leave must provide a physician's release certifying ability to return to work.

### Bereavement

Bereavement leave is not covered by or required under state or federal family leave laws. Like other benefits, bereavement leave is dependent on the employer's policy. The District needs to decide whether the leave is paid or unpaid, how much time is allowed as paid time, which family members are included, and whether sick leave or personal leave can be used for such situations. Bereavement leave is not generally covered under OFLA or FMLA.

Even though these policies grant up to 12 weeks of family leave per year for qualifying situations, such as a family member with a serious health condition, they do not apply after the ill person has died, unless the death of a loved one has in some way “incapacitated” the employee from being able to work.

### ***Religious Accommodation***

If an employee requests time off for a religious holiday or for the Sabbath when his religion prohibits him from working, the district is obligated to make reasonable accommodation, provided (1) the religious belief is sincerely held, and (2) the accommodation would not pose an undue hardship. The district is not required to make special accommodations when the employee’s request is based on mere preference, such as attending a religious convention, camp, or retreat. An example of an undue hardship in this case might be if another employee already had scheduled that same time off. The district is not obligated to “bump” that employee.

### ***Bonuses***

The district can offer bonuses. Most critical is the source of the funds for such bonuses. Make sure they are “discretionary” and do not come out of a grant or contract that does not approve them.

It is important to distinguish between “discretionary” or “nondiscretionary” bonuses. If you award bonuses from time to time without regard to individual employee performance (e.g. a Christmas bonus for all employees), such bonuses are discretionary and can be given or not on the District’s discretion.

If you have promised or guaranteed specific bonuses to employees who reach given production or performance levels, these are nondiscretionary bonuses offered as part of the wage agreement. [Such bonuses are sometime called “incentives”.]

Nondiscretionary bonuses cannot be withheld arbitrarily. Your policy should clearly specify how and when such bonuses are earned, and whether an employee who terminates prior to the bonus award date will receive a prorated portion of the bonus.

### ***General Provisions***

Your policy may require employees to exhaust their accrued sick leave, vacation, and other paid time off before granting a leave without pay. But the district needs to state the policy very clearly to avoid disputes.

Be very careful about how leaves are scheduled. For example, can employees schedule personal days at their convenience if they provide advance notice? Or must leaves be approved by a supervisor or designated person and therefore can be denied based on reasonable business demands, workload, and staffing levels?

Encourage employees to plan well ahead, if possible, to ensure they have the time to use their accrued leaves within the allowed time, if your policies stipulate the leave cannot be accrued beyond a certain maximum or beyond a certain time limit.

It's legal to offer different benefits to different employees, as long as the district is not discriminating. "Grandfathering in" some employees under a benefits plan does not violate discrimination laws if it is based strictly on seniority or hire date. Districts can offer different benefits to different classifications or based on different work duties, work locations, prior experience, or salary levels. Be very specific and clear if distinctions are made.

Never forget that the best agreement is one in writing, signed by the district and employee. Avoid verbal promises and implied or ambiguous arrangements.

### ***Overtime Pay and Leaves***

In the event an hourly employee works more than 40 hours in a workweek, but some of those hours are for sick leave or other paid time off, the requirement for paying overtime or granting compensatory time does not apply. Overtime is calculated based on hours actually worked. Do not count leave hours used during the same workweek [unless an employment contract or collective bargaining agreement states otherwise].

### ***Insurance***

Insurance is a benefit that may be paid in full, in part, or not at all by the district. A minimum period of employment prior to eligibility may be a requirement, provided it is stated in both the policies and the contract with the insurance carrier. During an employee leave of absence the insurance may or may not be continued at cost to the district or the employee. If the district chooses to purchase insurance for the employee, it is recommended the district pay the insurance company directly to qualify as a benefit that is not taxable to the employee.

If you choose to reimburse the employee for insurance costs, it is considered taxable wages. Proof of insurance must be provided to the district if a dollar amount is paid to the employee to secure insurance. This amount will not be added to the annual gross wage if the entire amount is paid toward the insurance premium. If the premium amount is less than the dollar amount paid to employee to secure insurance, the difference between the amount paid to employee and insurance premium will be added to annual gross wage of the employee.

For the purpose of group health insurance in Oregon, a small group is defined as an employer who employed (on at least half of its working days during the past year), no fewer than 2 and no more than 50 employees working at least 17.5 hours or more per week. If offered, insurance must be on a non-discriminatory basis and there are particular legal restrictions depending on the employer's category. Look under the web site for the Oregon Department of Consumer & Business Services, Insurance Division.

**Before establishing any insurance policy, consult a knowledgeable employee benefit insurance broker or your insurance carrier to explore the options.**

### ***Emergency Closings***

When a district office is closed due to an emergency, the employee may use PTO, leave without pay, or may make the time up within the same work week with the approval of the employee's supervisor. The district needs a policy on whether

employees can “work at home” instead of coming to the office during inclement weather. The district also needs to clarify with NRCS whether district employees can work at the office, if NRCS is observing a holiday or they have closed the office for any reason. (See Exhibit 7.3 – Sample Inclement Weather Decision).

## **Exhibit 7.1 – FMLA Language and Forms**

### **Family and Medical Leave**

*NOTE: This policy applies to the federal FMLA requirements that cover employers with 50 or more employees and all public employees. Organizations must adapt their policies to include any medical leave requirements mandated by individual states as required.*

Our Family and Medical Leave policy allows you to take a leave of absence for your own serious health condition; for the birth or adoption of a child; for the placement of a foster child; or for the care of a child, spouse, or parent with a serious health condition.

### **Eligibility**

You will be eligible to take family and medical leave if you meet the following requirements:

- You are a regular full- or part-time employee and you have been employed for at least one year or more before the first day of the leave; and,
- You have worked at least 1,250 hours or more during the preceding twelve months.

### **Length of Leave**

You may take a leave of up to twelve weeks of family and medical leave during a twelve-month period. A week is defined as your normal work week schedule. The twelve-month period will be measured forward from the date of leave. If medically necessary, family and medical leave may be taken on a reduced or intermittent schedule. Details of the proposed schedule should be attached to the Request for Family and Medical Leave Form and should be verified by the certifying health care professional on the Health Care Provider Certification Form.

### **Request Procedure**

When the need for medical leave is known in advance, you must give 30 days written notice to take family and medical leave by filling out and turning in to **(designated position or department)** the Request for Family and Medical Leave Form and the Health Care Provider Certification Form.

In an emergency situation where there is no opportunity to give notice, you must notify your supervisor of the intent to take family and medical leave immediately. You also must deliver the completed Request for Family and Medical Leave Form and the Health Care Provider Certification Form within fifteen days of your request for leave.

Requests for family and medical leaves must be verified by a health care professional by using the Health Care Provider Certification Form. Furthermore, if you are taking family and medical leave to care for a family member with a serious health condition, you will be asked to provide proof of your relationship to this person. Please check with **(designated position or department)** to discuss how best to provide this proof.

In the case of adoption, a legal representative who can attest to the validity of the adoption must verify the request for family and medical leave. In the case of placement of a foster child, a representative of the agency making the placement can verify the request.

Any medical information provided regarding a personal health condition or the health condition of a family member is kept confidential and only those with a valid, business-related reason for knowing will have access to any of this information. If you have any questions about how this information will be handled, please contact **(designated position or department)**.

### **Pay While on Leave**

You {are required to/may} use any accrued vacation, sick leave, or other paid leave available to you during family and medical leave. Once this is used, the rest of the leave will be unpaid.

### **Status of Benefits**

We will continue to pay our share of your medical benefits during family and medical leave. You must pay your share of medical insurance premiums before they are due, and you may be required to provide periodic status reports to the organization while on a family and medical leave. You may continue other insurance benefits by paying the full cost of the premium for any leave exceeding four workweeks. Premium payments must be received by the due date or coverage will be discontinued.

### **Reinstatement**

You are entitled to return to the same position or an equivalent job with equivalent benefits, pay, and other terms and conditions of employment at the end of a family and medical leave. You may be required to present a fitness-for-duty certificate before being reinstated.

Other details regarding family and medical leave are available from **(designated position or department)**.

# **FAMILY AND MEDICAL LEAVE POLICY**

## **(Sample)**

### **I. PURPOSE**

The purpose of the Family and Medical Leave policy is to enable employees to take reasonable leaves of absence for personal medical reasons, for the birth or adoption of a child, for the placement of a foster child, and, for the care of a child, spouse, or parent who has a serious health condition. This policy is intended to comply with the federal Family and Medical Leave Act (FMLA) regulating this practice.

*Any state regulations that interact with FMLA must be integrated into this policy.*

### **II. ELIGIBILITY:**

Eligible employees include full-time and part-time workers who meet each of the following criteria. The eligible employee:

- a) has been employed for at least one year or 52 weeks or more before the first day of the family medical leave; and
- b) has worked at least 1,250 hours or more during the preceding twelve (12) months; and,
- c) works at a worksite where there are at least 50 employees working within 75 road miles.

### **III. FAMILY AND MEDICAL LEAVE**

An employee is entitled to take family and medical leave in the following situations:

- in the event of birth or adoption of a child (including placement of foster child with State involvement) within 12 months of the event.
- to care for a spouse, child or parent with a "serious health condition".
- when the employee is unable to perform essential functions of job because of a "serious health condition."

### **IV. REQUEST FOR FAMILY AND MEDICAL LEAVE**

In situations where the need for medical leave is known, employees must give thirty (30) days written notice to take family and medical leave. Please notify your immediate supervisor if you foresee a need for this leave. All employees will be required to hand in a Certification of Health Care Provider form. After giving notice to your supervisor, instructions on filling out forms will be provided to you.

We recognize that many times the need for Family and Medical Leave can be caused by serious or emergency situations. We will make every attempt to work with you to ensure that you receive all benefits to which you are entitled, however, we ask that you call us and make every effort to communicate your situation to us.

If an employee has a need for family and medical leave due to a personal chronic health condition, please see Human Resources for additional information and instructions.

## V. CERTIFICATION

All requests for family and medical leave must be certified. In the event of a personal health condition or that of a family member, the certification must be submitted on the company form "Certification of Health Care Provider." Employees who fail to provide certification may be denied having their leave credited to the entitlement under the law.

All requests for family and medical leave must be verified by a health care professional by using the Certification by Physician or Practitioner form. In the case of adoption, family and medical leave must be verified by a legal representative who can attest to the validity of the adoption. In the case of placement of a foster child, a representative of the agency making the placement can verify the request.

In the instance of taking family and medical leave to care for a family member with a serious health condition, you will be asked to provide proof of your relationship to this person. Please check with Human Resources to discuss how best to provide this proof.

**NOTE:** Any medical information provided on either a personal health condition or the health condition of a family member is kept confidential and only those with a valid business-related reason for knowing any details will have access to any of this information. If you have any questions about how this information will be handled, please contact Human Resources.

*(The main issue with certifications is generally a health condition, either that of the employee or his/her family member. We include language about certifying any request for family and medical leave in order to treat all employees consistently. State regulations may regulate the type of medical information that employers are allowed to request.)*

## VI. GENERAL PROVISIONS

Employees are entitled to take up to twelve (12) weeks family medical leave during a 12 month period. The "week" is the employee's normal work week schedule. In situations where both spouses are employed by this Company, the combined maximum medical and family leave allowed will be twelve (12) weeks total **EXCEPT** in the situations of personal serious illness or a seriously ill child.

Employees must use any accrued vacation, sick leave, or other paid leave available to them during the family medical leave. *(policy decision)*

If medically necessary, family medical leave may be taken on a reduced or intermittent schedule. Details of the proposed schedule should be verified by the certifying physician or practitioner on the "Certification by Physician or Practitioner" form.

The company will continue to pay its share of employee's health insurance benefits during family medical leave. However, the employee will also be required to maintain his/her regular contribution to premiums during this period. Failure to make any required payment for employee or dependent coverage within 30 days of its due date will result in benefit discontinuance. If you have questions about how to pay your premium while you are on unpaid leave, please check with Human Resources. *(policy decision)*

An employee who takes family and medical leave is entitled to return to the same position or a position with equivalent benefits and pay within 20 miles of original workplace.

**(COMPANY NAME)**  
**FAMILY AND MEDICAL LEAVE REQUEST**

*Page 1 of 2*

Attached is our company policy on family and medical leave, the Family and Medical Leave Request form, and Certification of Health Care Provider form. To apply for family and medical leave, you must return this information data sheet showing that you have read and understand the following information and the company policy which explains your rights and responsibilities under family and medical leave laws. In addition, you must submit the Family and Medical Leave form and the Certification of Health Care Provider form according to the guidelines in the Company policy.

**Important Points**

1. In the event of a personal medical emergency which would prevent you from filling out the necessary forms, you may designate someone else to act in your place.
2. Everyone requesting Family and Medical Leave is required to provide medical certification by a Health Care Provider. Failure to do so will result in disciplinary action up to and including termination. In adoption situations or foster child placements, the practitioner may be a legal representative or representative of an authorized agency who can attest to the validity of the adoption or foster placement situation.
3. The company will require the use of any paid vacation and/or sick leave to be counted as part of your family and medical leave. When these accrued benefits are exhausted, your leave will be switched to unpaid leave. (*Note: California employers cannot **require** the use of accrued sick leave but the employee **can choose** to use it.*)
4. The company will continue to pay its portion of your health insurance premium while you are on family and medical leave. However, you are responsible to continue to pay your share of the health insurance premiums. Failure to pay these premiums will result in canceling your health insurance coverage (after a 30 day grace period). We strongly recommend that you meet with Payroll who will calculate the premiums you will owe while on leave, deduct these from your final check, and pay your share of the premiums for your while you are on leave.
5. If you fail to return to work at the end of the leave period, you will be responsible to reimburse the company for the cost of company provided health insurance premiums during the unpaid leave period, unless you fail to return to work because of circumstances beyond your control.

I have read the above information and the company's policy on family and medical leave and understand my rights and responsibilities with regards to family and medical leave.

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Signature

---

Date

**FAMILY AND MEDICAL LEAVE REQUEST**

Please type or print

<b>PART I: TO BE COMPLETED BY EMPLOYEE</b>	
1a. Name of employee ( first, middle initial, last) 1b. Social Security Number	
2a. Department:	2b. Position/Title:
3. Reason for requested FML leave: a. ___ Care for a newborn child, or newly placed adopted or foster child b. ___ Care for spouse, child, parent or parent-in-law with a serious health condition c. ___ Care for my own serious health condition which prevents me from performing my job functions	
4. If "b", please check one: ___ Spouse ___ Child ___ Parent ___ Parent-in-law	
5. If "b", state name and address of relation: Name: Address:	
6. Date on which you wish to begin your leave:	7. Date of anticipated return to work:
8. Are you requesting leave on an intermittent (reduced workday hours) or reduced leave (fewer workdays each workweek) schedule? ___ Yes ___ No	
9. If "Yes", please attach schedule of when you anticipate you will be unavailable for work:	
I understand that my leave may be delayed until I return the Medical Certification of Health Care Provider Form.	
Signed	Dated
<b>PART II: TO BE COMPLETED BY PAYROLL REPRESENTATIVE</b>	
Effective beginning date of requested leave, employee has ___ days of vacation and ___ days of sick leave, that will be used to cover family medical leave.	
Payroll Authorization	Dated
<b>PART III: TO BE COMPLETED BY HUMAN RESOURCES REPRESENTATIVE</b>	
Action Taken: ___ Employee eligible for Family and Medical Leave; leave granted ___ Employee not eligible for Family and Medical Leave; leave denied ___ Other reason for denial (explain)	
Human Resources Representative's Authorization	Dated

**CERTIFICATION OF HEALTH CARE PROVIDER**

(Family and Medical Leave Act of 1993)

**NOTE: Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.**

- 1. Employee's Name: \_\_\_\_\_
- 2. Patient's Name (if different from employee): \_\_\_\_\_
- 3. Page 3 of this form describes what is meant by a "serious health condition" under the Family and Medical Leave Act. Does the patient's condition qualify under any of the categories described? If so, please check the applicable category.  
(1) \_\_\_\_\_ (2) \_\_\_\_\_ (3) \_\_\_\_\_ (4) \_\_\_\_\_ (5) \_\_\_\_\_ (6) \_\_\_\_\_, or None of the above \_\_\_\_\_

4. Describe the medical facts which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:  
\_\_\_\_\_  
\_\_\_\_\_

5.a. State the approximate date the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present incapacity - if different):  
\_\_\_\_\_  
\_\_\_\_\_

b. Will it be necessary for the employee to take work only intermittently or to work on a less than full schedule as a result of the condition (including for treatment described in item 6 below)? \_\_\_\_\_  
If yes, give the probable duration: \_\_\_\_\_  
\_\_\_\_\_

c. If the condition is a chronic condition (condition #4) or pregnancy, state whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity: ("Incapacity", for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

6.a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments:  
\_\_\_\_\_  
\_\_\_\_\_

If the patient will be absent from work or other daily activities because of treatment on an intermittent or part-time basis, also provide an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:  
\_\_\_\_\_  
\_\_\_\_\_

b. If any of these treatments will be provided by another provider of health services (e.g., physical therapist), please state the nature of the treatments:  
\_\_\_\_\_  
\_\_\_\_\_

c. If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):  
\_\_\_\_\_  
\_\_\_\_\_

7.a. If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee unable to perform work of any kind?

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---

b. If able to perform some work, is the employee unable to perform any one or more of the essential functions of the employee's job (the employee or the employer should supply you with information about the essential job functions)?

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If yes, please list the essential functions the employee is unable to perform:

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c. If neither a. nor b. applies, is it necessary for the employee to be absent from work for treatment?

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8.a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation?

---

---

b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery?

---

---

c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need:

---

---

\_\_\_\_\_  
(Signature of Health Care Provider)

\_\_\_\_\_  
(Type of Practice)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Telephone Number)

To be completed by the employee needing family leave to care for a family member:

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently or if it will be necessary for you to work less than a full schedule:

---

---

\_\_\_\_\_  
(Employee Signature)

\_\_\_\_\_  
(Date)

A "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

(a) A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

- (1) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
- (2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

3. Pregnancy

Any period of incapacity due to pregnancy, or for parental care.

4. Chronic Conditions Requiring Treatments

A chronic condition which:

- (1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- (2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- (3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

5. Permanent/Long-term Conditions Requiring Supervision

A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions)

Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

**FAMILY AND MEDICAL LEAVE**

Employee Notice

DATE: \_\_\_\_\_

TO: \_\_\_\_\_  
(Employee's Name)

FROM: \_\_\_\_\_  
(Name of appropriate employer representative)

SUBJECT: Request for Family and Medical Leave

On \_\_\_\_\_, you notified us of your need to take family and medical leave due to:  
(date)

\_\_\_ the birth of your child, or the placement of a child with you for adoption or foster care; or

\_\_\_ a serious health condition that makes you unable to perform the essential functions of your job; or

\_\_\_ a serious health condition affecting your \_\_\_\_\_ spouse, \_\_\_\_\_ child,  
\_\_\_ parent, for which you are needed to provide care.

You notified us that you need this leave beginning on \_\_\_\_\_ and  
(date)

that you expect leave to continue until on or about \_\_\_\_\_.

Except as explained below, you have a right for up to 12 weeks of unpaid leave in a 12-month period for the reasons listed above. Also, your health benefits will be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you will be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following this leave for a reason other than: (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to leave; or (2) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your leave.

This is to inform you that: (check appropriate boxes; explain where indicated)

1. You are \_\_\_\_\_ eligible, \_\_\_\_\_ not eligible for leave under the state and federal leave laws.

Page 2 - Family and Medical Leave Employee Notice

2. The requested leave \_\_\_\_\_ will, \_\_\_\_\_ will not be counted against your annual FMLA leave entitlement.
- 3.a. You \_\_\_\_\_ will, \_\_\_\_\_ will not be required to furnish medical certification of a serious health condition. If required, you must furnish certification by \_\_\_\_\_ (insert date) (must be at least 15 days after you are notified of this requirement) or we may delay the commencement of your leave until the certification is received.
- b. You \_\_\_\_\_ will, \_\_\_\_\_ will not be required to furnish certification for the \_\_\_\_\_ adoption, \_\_\_\_\_ foster care placement.
4. You must use any accrued paid leave before using unpaid leave. Your current paid leave includes:
- 
- 
- 5.a. If you normally pay a portion of the premiums for your health insurance, these payments will continue during the period of FMLA leave. Arrangements for payment have been discussed with you and it is agreed that you will make premium payments as follows: (Set forth dates, e.g., the 10th of each month, or pay periods, etc. that specifically cover the agreements with the employee.)
- 
- 
- b. You have a minimum 30-day (or, indicate longer period, if applicable) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be canceled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during leave, and recover these payments from you upon your return to work.
6. You will be required to present a fitness-for-duty certificate prior to being restored to employment, if the leave is for personal medical reasons. If such certification is required but not received, your return to work may be delayed until the certification is provided.
7. While on leave, you will be required to furnish us with periodic reports every \_\_\_\_\_ of your status and intent to return to work. If the circumstances of your leave change and you are able to return to work earlier than the date indicated on the reverse side of this form, you will be required to notify us at least two work days prior to the date you intend to report for work.

## ***Exhibit 7.2 – OFLA/FMLA [sample policy]***

### **Family and Medical Leave**

*The policy integrates the federal and state family leave laws.*

#### **PURPOSE**

Our Family and Medical Leave policy allows you to take a leave of absence for your own serious health condition. Leave is also granted for the birth or adoption of a child, for the placement of a foster child, for the care of a child, spouse or same sex domestic partner, parent or parent-in-law with a serious health condition and for the care of a sick child. This policy is intended to comply with federal and state laws regulating this practice.

#### **ELIGIBILITY**

You will be eligible to take a family and medical leave if you meet the following requirements:

- You have been employed for at least 180 days (26 weeks) or more before the first day of the family and medical leave; and
- You have worked an average of 25 or more hours per week as of the day before the request for family and medical leave is made. This average is calculated over the 180 days preceding the request for leave. For the purpose of taking leave for the birth, adoption or placement of a child (parental leave), there is no hours worked requirement.

#### **FAMILY AND MEDICAL LEAVE**

You are eligible to take family and medical leave in the following situations:

- To care for an infant or a newly placed adopted or placed foster child under the age of 18, or older than 18 if incapable of self-care due to mental or physical disability, within 12 months of the event (parental leave);
- To care for a family member with a serious health-condition, or your own serious health condition (serious health condition leave) [note: Oregon covers child, parent, parent-in-law, spouse and same sex domestic partner. Federal law covers only child, parent, and spouse. This means an employee may be eligible for 12 weeks under Oregon and 12 weeks under federal in some situations];
- For a pregnancy disability or prenatal care (pregnancy disability leave) [Female employees who have used up their original 12 weeks for a serious health condition related to pregnancy are entitled to an additional 12 weeks of parental leave];

- To care for a sick child who does not have a serious health condition but requires home care (sick child leave). [Note: Employees who use up their original 12 weeks for parental leave are entitled to an additional 12 weeks of sick child leave].

## **LENGTH OF LEAVE**

You may take a leave of up to twelve (12) weeks of family and medical leave during a 12-month period. A week is defined as your normal work week schedule. The 12-month period will be measured forward from the date of leave [organizations can choose to count a calendar year, rolling forward or rolling backward calculation]. If medically necessary, family and medical leave may be taken on a reduced or intermittent schedule. Details of the proposed schedule should be attached to the "Request for Family Leave" form and should be verified by the certifying health care professional on the Health Care Provider Certification form.

## **REQUEST AND CERTIFICATION PROCEDURE**

In situations where the need for medical leave is known, you must give thirty (30) days written notice to take family and medical leave by filling out and turning in the Request for Family and Medical Leave form and the Health Care Provider Certification form.

We recognize that many times the need for family and medical leave can be caused by serious or emergency situations. We will make every attempt to work with you to ensure that you receive all benefits to which you are entitled, however, we ask that you call us and make every effort to communicate your situation to us immediately.

All requests for family and medical leave must be verified by a health care professional by using the Health Care Provider Certification form, which needs to be returned within 15 days of a request for leave. Furthermore, if you are taking family and medical leave to care for a family member with a serious health condition, you will be asked to provide proof of your relationship to this person. Please check with (designate person or department) to discuss how best to provide this proof.

In the case of adoption, a legal representative who can attest to the validity of the adoption must verify the request for family and medical leave. In the case of placement of a foster child, a representative of the agency making the placement can verify the request.

Any medical information provided on either a personal health condition or the health condition of a family member is kept confidential and only those with a valid business-related reason for knowing any details will have access to any of this information. If you have any questions about how this information will be handled, please contact (designate person or department).

## **GENERAL PROVISIONS**

You (are required to use) (may) use any accrued vacation, sick leave, or other paid leave available to you during the family and medical leave. When this is exhausted, the

balance of the leave will be unpaid. The organization will continue to pay our share of your medical benefits during family and medical leave. You are responsible for paying your share of medical insurance premiums prior to the due date of the premium payment. You may be required to provide periodic status reports to the organization while on a family and medical leave. You may continue other insurance benefits by paying the full cost of the premium for any leave in excess of four workweeks in duration. Premium payments must be received by the due date or coverage will be discontinued.

**Exception:** If you take a leave to care for a parent-in-law or same sex domestic partner with a serious health condition that does not qualify for an FMLA leave, you may continue benefits under COBRA at your own expense during leave (*policy decision*).

You are entitled to return to the same or an equivalent job with equivalent benefits, pay and other terms and conditions of employment at the end of a family and medical leave. You will be required to present a fitness-for-duty certificate before being reinstated.

Other details regarding family and medical leave are available from (designate who).

(Note: Oregon Employers are required to pay for any expenses incurred by the employee to provide the Health Care Provider Form.)

**FAMILY AND MEDICAL LEAVE REQUEST Page 2 of 2**

**Please type or print**

<b>PART I: TO BE COMPLETED BY EMPLOYEE</b>	
1a. Name of employee ( first, middle initial, last) 1b. Social Security Number	
2a. Department:	2b. Position/Title:
3. Reason for requested FML leave: a. ___ Care for a newborn child, or newly placed adopted or foster child b. ___ Care for spouse, child, parent or parent-in-law with a serious health condition c. ___ Care for my own serious health condition which prevents me from performing my job functions	
4. If "b", please check one: ___ Spouse ___ Child ___ Parent ___ Parent-in-law	
5. If "b", state name and address of relation: Name: Address:	
6. Date on which you wish to begin your leave:	7. Date of anticipated return to work:
8. Are you requesting leave on an intermittent (reduced workday hours) or reduced leave (fewer workdays each workweek) schedule? ___ Yes ___ No	
9. If "Yes", please attach schedule of when you anticipate you will be unavailable for work:	
I understand that my leave may be delayed until I return the Medical Certification of Health Care Provider Form.	
Signed	Dated
<b>PART II: TO BE COMPLETED BY PAYROLL REPRESENTATIVE</b>	
Effective beginning date of requested leave, employee has ___ days of vacation and ___ days of sick leave, that will be used to cover family medical leave.	
Payroll Authorization	Dated
<b>PART III: TO BE COMPLETED BY HUMAN RESOURCES REPRESENTATIVE</b>	
Action Taken: ___ Employee eligible for Family and Medical Leave; leave granted ___ Employee not eligible for Family and Medical Leave; leave denied ___ Other reason for denial (explain)	
Human Resources Representative's Authorization	Dated

**CERTIFICATION OF HEALTH CARE PROVIDER**

(Family and Medical Leave Act of 1993)

**NOTE: Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.**

1. Employee's Name: \_\_\_\_\_
2. Patient's Name (if different from employee): \_\_\_\_\_
4. Page 3 of this form describes what is meant by a "serious health condition" under the Family and Medical Leave Act. Does the patient's condition qualify under any of the categories described? If so, please check the applicable category.
- (1) \_\_\_\_\_ (2) \_\_\_\_\_ (3) \_\_\_\_\_ (4) \_\_\_\_\_ (5) \_\_\_\_\_ (6) \_\_\_\_\_, or None of the above \_\_\_\_\_

5. Describe the medical facts which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:

\_\_\_\_\_

\_\_\_\_\_

5.a. State the approximate date the condition commenced, and the probable duration of the condition (and also the probable duration of the patient's present incapacity - if different):

\_\_\_\_\_

\_\_\_\_\_

b. Will it be necessary for the employee to take work only intermittently or to work on a less than full schedule as a result of the condition (including for treatment described in item 6 below)? \_\_\_\_\_

If yes, give the probable duration: \_\_\_\_\_

\_\_\_\_\_

c. If the condition is a chronic condition (condition #4) or pregnancy, state whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity: ("Incapacity", for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

6.a. If additional treatments will be required for the condition, provide an estimate of the probable number of such treatments:

\_\_\_\_\_

\_\_\_\_\_

If the patient will be absent from work or other daily activities because of treatment on an intermittent or part-time basis, also provide an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and period required for recovery if any:

\_\_\_\_\_

\_\_\_\_\_

b. If any of these treatments will be provided by another provider of health services (e.g., physical therapist), please state the nature of the treatments:

\_\_\_\_\_

\_\_\_\_\_

- c. If a regimen of continuing treatment by the patient is required under your supervision, provide a general description of such regimen (e.g., prescription drugs, physical therapy requiring special equipment):

---

- 7.a. If medical leave is required for the employee's absence from work because of the employee's own condition (including absences due to pregnancy or a chronic condition), is the employee unable to perform work of any kind?

---

---

- c. If able to perform some work, is the employee unable to perform any one or more of the essential functions of the employee's job (the employee or the employer should supply you with information about the essential job functions)?

---

---

If yes, please list the essential functions the employee is unable to perform:

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---

- c. If neither a. nor b. applies, is it necessary for the employee to be absent from work for treatment?

---

- 8.a. If leave is required to care for a family member of the employee with a serious health condition, does the patient require assistance for basic medical or personal needs or safety, or for transportation?

---

---

- b. If no, would the employee's presence to provide psychological comfort be beneficial to the patient or assist in the patient's recovery?

---

---

- c. If the patient will need care only intermittently or on a part-time basis, please indicate the probable duration of this need:

---

---

---

(Signature of Health Care Provider)

---

(Type of Practice)

---

(Address)

---

(Telephone Number)



Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

**FAMILY AND MEDICAL LEAVE**

Employee Notice

DATE: \_\_\_\_\_

TO: \_\_\_\_\_  
(Employee's Name)

FROM: \_\_\_\_\_  
(Name of appropriate employer representative)

SUBJECT: Request for Family and Medical Leave

On \_\_\_\_\_, you notified us of your need to take family and medical leave due to:  
(date)

\_\_\_ the birth of your child, or the placement of a child with you for adoption or foster care; or

\_\_\_ a serious health condition that makes you unable to perform the essential functions of your job; or

\_\_\_ a serious health condition affecting your \_\_\_\_\_ spouse, \_\_\_\_\_ child,  
\_\_\_ parent, for which you are needed to provide care.

You notified us that you need this leave beginning on \_\_\_\_\_ and  
(date)

that you expect leave to continue until on or about \_\_\_\_\_.

Except as explained below, you have a right for up to 12 weeks of unpaid leave in a 12-month period for the reasons listed above. Also, your health benefits will be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you will be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following this leave for a reason other than: (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to leave; or (2) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your leave.

This is to inform you that: (check appropriate boxes; explain where indicated)

1. You are \_\_\_\_\_ eligible, \_\_\_\_\_ not eligible for leave under the state and federal leave laws.

Page 2 - Family and Medical Leave Employee Notice

2. The requested leave \_\_\_\_\_ will, \_\_\_\_\_ will not be counted against your annual FMLA leave entitlement.
  
- 3.a. You \_\_\_\_\_ will, \_\_\_\_\_ will not be required to furnish medical certification of a serious health condition. If required, you must furnish certification by \_\_\_\_\_ (insert date) (must be at least 15 days after you are notified of this requirement) or we may delay the commencement of your leave until the certification is received.
  
- c. You \_\_\_\_\_ will, \_\_\_\_\_ will not be required to furnish certification for the \_\_\_\_\_ adoption, \_\_\_\_\_ foster care placement.
  
5. You must use any accrued paid leave before using unpaid leave. Your current paid leave includes:  

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---
  
- 5.a. If you normally pay a portion of the premiums for your health insurance, these payments will continue during the period of FMLA leave. Arrangements for payment have been discussed with you and it is agreed that you will make premium payments as follows: (Set forth dates, e.g., the 10th of each month, or pay periods, etc. that specifically cover the agreements with the employee.)  

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---
  
- c. You have a minimum 30-day (or, indicate longer period, if applicable) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be canceled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during leave, and recover these payments from you upon your return to work.
  
6. You will be required to present a fitness-for-duty certificate prior to being restored to employment, if the leave is for personal medical reasons. If such certification is required but not received, your return to work may be delayed until the certification is provided.
  
7. While on leave, you will be required to furnish us with periodic reports every \_\_\_\_\_ of your status and intent to return to work. If the circumstances of your leave change and you are able to return to work earlier than the date indicated on the reverse side of this form, you will be required to notify us at least two work days prior to the date you intend to report for work.

## ***Exhibit 7.3 – Sample Inclement Weather Decision***

TO: \_\_\_\_\_ Staff  
FR: \_\_\_\_\_  
RE: Paid snow days for January 2006  
DT: January 21, 2005

At last night's Board meeting, the Board decided that staff should be paid for work they missed as a result of the snow and ice that occurred January 6-9, 2006. The intent is for staff to be paid for the number of hours they normally would have worked that week.

If you worked (at the office or at home) on the snowy and icy days, you should record your hours worked as you normally do, using whatever activity codes apply. Then add enough hours using the activity code "Other" to bring your hours for the day up to the total number of hours you were scheduled for. Your total for the week, work time and "Other" time combined, should equal the total number of hours you would have been scheduled to work that week.

\_\_\_\_\_ and I should have a total of 32 hours for that week. \_\_\_\_\_ should have 40.  
\_\_\_\_\_ should have 20.

Please go into your timesheet and enter hours for January 6, 7, 8, and 9 to show the hours you worked and the "Other" hours. Use whatever funder codes you'd normally use. For the time off due to snow and ice, please use code "10 Other", with no other subcode – just "10 Other". Once you have entered your time for that week, please check the total by clicking View – Time Activity Log – and type in the dates of January 4 - January 10. Make sure your total hours equals 32 (\_\_\_\_\_ and me), 40 (\_\_\_\_\_), or 20 (\_\_\_\_\_). There should be no overtime or comp time accrued that week.

Please see me if you have questions or need help filling out your timesheet.

Note: This is not a policy for future bad weather days. This is just for this particular storm event. \_\_\_\_\_ will be working on a policy.

Thanks.

## Chapter 8 – Employment Issues and Policies

This chapter covers an assortment of issues that may arise during district employees' tenure.

### ***Complete Necessary Forms and Other Paperwork***

Meet with employee on first day to fill out forms.

- Department of Justice New Hire Reporting Form.
- W-4.
- I-9.
- Complete data and emergency contact cards.
- Other forms as required or needed.

### ***Orientation***

After an applicant is hired, employers often “drop the ball” by failing to take the time to orient the new hire to the standards and expectations of the district. Employee orientation can be an effective tool to establish a new employee's receipt of anti-harassment policies and other rules, but will also expedite a smooth transition.

New employee orientation should be provided within the first week of the employee's start date. See Exhibit 8.1, New Employee Orientation. At a minimum, the orientation should include the following:

- Issue Keys.
- Issue I.D. cards.
- Provide business cards.
- Introduction of local staff.
- Tour facilities.
- Outline of the Core Conservation Partnership.
- Work schedule.
- Pay period calendar.
- Information on the field office including work stations and equipment, parking, restrooms, food facilities, security procedures, etc.
- Travel and training procedures.
- Additional written work rules, policies and procedures not included in the Employee Handbook.
- Provide a copy and allow time for review of personnel policies.
- Review specific items of personnel policies essential to daily work; i.e., work week, breaks, time keeping, personal use of district equipment, etc.
- Review job description, work plan requirements, and expectations.
- Provide copies of documents essential to understanding the district and the employee's job (i.e., annual report, annual work plan, long-range business plan, grant expectations, etc.).

- Procedures and schedules for employee evaluations.
- Create log-ins and issue passwords for computer use.
- Review safety procedures and security measures.

Because many topics need to be covered and forms completed in processing a hiring decision, establish a mechanism to introduce new hires to your district, policies, procedures, standards of expectation, other employees, partners, general “ways of doing business”, community, etc. Developing an orientation checklist tailored to your district is recommended.

### ***Review Job Description, Work Plan, Business Plan and Related Documents***

Review the position description, work plan, and expectations to develop an Employee Work Plan and identify additional training that may be needed to increase the employee’s skills to a desirable level.

### ***Personnel Files***

An individual personnel file should be established for each employee and maintained by the district board. This file will include records such as the employment application, confirmation of acceptance letter, position description, duties and standards, Form I-9, W-4 [or a W-4 for Oregon and another W-4 for federal, if the employee elects different deductions], Employee Confidential Emergency Information form [Exhibit 8.3], Acknowledgement of Receipt of Employee Handbook [Exhibit 8.7], performance evaluations, documentation of general performance and work record, report of personnel actions, etc. Accident reports, claims for Workers’ Compensation, medical information, and payroll items should be kept in separate files.

All personnel files are confidential, must be secure, locked, and preferably in a fire-resistant safe. Medical records must be kept separate.

Employers must present personnel records for inspection (or a certified copy if requested) to an employee (or terminated employee) within 45 days of the request. Employers who do not satisfy this requirement may be subject to up to a \$1,000 civil penalty for non-compliance with this requirement.

### ***Employment Contracts***

Written employment contracts, particularly for top administrators or managers, can be useful to prescribe duties and benefits. However, they can also present significant hurdles and difficulties, if the district is unhappy with the employee’s performance. They must be carefully written to avoid potential legal problems and to not void the at-will provisions. For small agencies like conservation districts, experience shows they don’t provide significant benefit. A well-defined job description and good personnel policies are just as good.

## ***Introductory Period***

### **The New Employee's First Few Months or the Current Employee's First Few Months on the New Job**

This unusual heading intends to draw your thinking to the question – what should we call these first few months: the first few months on the job by a new employee or the first few months when a current employee is transferred or promoted to a significantly different job?

Traditionally, the term used has been “probationary period”. While Webster’s definitions would make the term appropriate: “a time of testing”. It also has negative connotations some employers choose to avoid. Some personnel consultants think the use of “probation” might infer certain employment rights after the introductory period.

One commonly used term is “trial service period”. This term is used in many districts’ policies, and even in BOLI publications and website documents. However, negative opinions have been expressed about it as well.

Recent, more neutral, but still descriptive terms are “orientation period” or “introductory period”. “Introductory period” will be used in this handbook.

Key points to consider about this time period are given below, whatever you choose to call it. Some of these statements might be included in an employee handbook, as appropriate.

1. No specific laws define or require such a period. So it’s the district’s option to even have one or what to call it.
2. The period of time is used to evaluate if the person, the job, and the district are a “good fit” or a “good match”. In a sense, it helps to consider the time as a continuation of the hiring process.
3. The policies must make it clear the “introductory employee” can be terminated at any time.
4. Carefully define the terms and conditions that apply. For example, the policy may be for the “introductory employee” to accrue PTO [personal time off] but not be allowed to use it until the employee is moved to a different classification such as “regular”. Some employers choose to have employees accrue no benefits during this period.
5. Other conditions need to be spelled out regarding accrued leaves, disciplinary system, and access to training opportunities.
6. Introductory period employees have the same rights as regular employees against discrimination, harassment, and other civil right provisions.

7. Whatever time period is chosen [90 days, 180 days, or other], the district can extend the time if the district still have serious concerns about whether the orientation employee should be retained. However, if more than another 90 days is required, the employee may not be a “good fit” and it may be best to just terminate, rather than continue the indecision.
8. Only in small ways are they different from other employees. Job performance needs to be carefully documented, just as for any other employee. Job coaching, mentoring, orientation, and other such efforts to improve performance still go on. Promptly address any performance problems. In fact, the employee might claim he was not notified of his poor performance, was not given guidance, was not given a chance to improve, so his “trail service period” was unfair. The judge might agree.
9. Make it very clear there is no guarantee of ongoing employment after the period.
10. Districts have even made very serious mistakes and paid the consequences for such apparently innocent statements as “This is the way we hire all employees. You go through this period to get acquainted with the job and see if you like it and if we want to keep you. After six months, if everything looks good, you go to regular status, and we generally try to give a raise at that time.”

Establish an evaluation procedure for carefully evaluating employees before completion of the “introductory period.” Do not assume an employee who is marginal during this period will become successful after obtaining “regular employee” status. The opposite is more likely to occur. Remember: the best predictor of future behavior is past behavior.

Many employees assume completion of the “introductory period” provides them with “just cause” employment and therefore a “property interest” in their position. Except in unusual circumstances, employees do not become more dependable, more team-oriented, or markedly better performers after completion of the introductory period. If an employee demonstrates lack of motivation, “spotty” attendance and/or negative interpersonal relations, those traits generally become magnified once “job security” is attained.

### ***Supervision and Hierarchy***

Directors set employee job expectations, work schedule, wages, and benefits. But the responsibilities for supervision need to be clearly stated in policy. In general, the district manager [chief executive employee, whatever title is given] would be supervised by one director assigned by the board, or by the Personnel Committee. The district manager would then supervise those directly reporting to him/her. In larger staffs, supervision responsibilities might be delegated to lower levels in the organizational chart.

The district board should clearly identify what responsibilities, duties, and authorities are assigned to supervisors. Different degrees of authority might be delegated to different levels of supervision. For example, the district manager might have the authority to direct an employee's work, but not have the authority to hire and fire. The board might retain the authority to hire and fire, but should not have the duties to supervise daily activities of the employees supervised by the district manager.

### ***Review Job Expectations***

The supervisor and employee should review the position description. It should be understood what the job will require and what goals should be met by the employee. These documents should be signed by the employee as an acknowledgement, and a copy should be maintained in the individual employee personnel file. Please refer to the examples provided in Chapter 4. Performance duties and standards must be clearly stated for the Performance Evaluation.

### ***Hours of Work/Time Reporting Document/Pay Period***

District directors should set the starting time and ending time for district employees. Remember that someone should be coordinating the day-to-day activities of a district employee at all times. A district employee should not be working when the office is officially closed.

A typical workday is eight (8) hours with two 15-minute breaks, one mid-morning and one mid-afternoon, with a half hour or one-hour lunch. Paid rest periods of not less than 10 minutes for every four-hour segment (or major part of four hours) must be taken by the employee. This time must be taken in addition to and separately from time allowed for meals. As far as possible, the break should be taken in the middle of the work segment. Employers must ensure their employees are taking their rest breaks. If employees have worked through their rest breaks, they must be paid for an additional ten minutes of work time. The Oregon Court of Appeals recently ruled that employees have a right to file a lawsuit to recover unpaid wages, penalties, and attorney's fees attributable to missed rest breaks.

Meal periods of not less than 30 minutes must be given to employees who work six or more hours. For work days of six hours but less than seven hours, the meal period must be taken between the second and fifth hour worked. If the work period is more than seven hours, the meal period must be taken between the third and sixth hour worked. If an employee is required to remain on duty during the meal period or performs any tasks, the employee must be paid for the meal period. Supervisors are to ensure non-exempt employees taking a meal period do not perform any work during the meal period.

Oregon wage and hour law imposes penalties when all wages owed are not paid upon termination. If an employee has not been paid for a rest period upon termination, that small amount of wages may increase by an additional thirty

days' wages in penalties. Additionally, the employer may be liable for any attorney fees the employee incurs during this process. Districts should consider implementing a policy to require employees to report time worked during rest breaks in order to transfer the responsibility of reporting work during rest breaks back to the employee.

A district employee should not work more than 40 hours per week. [See Chapter 6, Wages, Taxes, and Overtime.] There is a copy of an Application for Leave, Exhibit 8.5. It is suggested districts offer Personal Time Off (PTO) as a form of leave, as outlined in Chapter 7. Districts should establish a pay period for all district employees consistent with the time reporting document. Most pay periods are bi-weekly.

### **Nursing Mothers Accommodation**

Employers with 25 or more employees must provide unpaid rest periods if no undue hardship is caused. Eligible employees are entitled to a 30-minute rest break for every four hours of work, unless it would create an undue hardship. An employer may allow an employee to temporarily change job duties, if the employee's regular duties do not allow her to express milk regularly. The employer must provide a private location for nursing employees to express milk in close proximity to the employee's work area.

### ***Equipment and Workstation***

NRCS will provide workstations and access to equipment for each district employee according to the Cooperative Working Agreement. An employee should not use or allow the use of district, state, or federal property of any kind for other than officially approved activities. No government equipment of any kind can be used for lobbying purposes.

It should be clearly stated that it is unacceptable for an employee to operate a government vehicle while under the influence of alcohol or drugs. The employee could be held personally liable if driving and acting outside the scope of his employment, and the district could be held liable as the employer.

The employee in a position that requires a valid state driver's license should be advised that if the employee's driver's license is suspended, revoked, or cancelled or the employee is otherwise disqualified from operating a motor vehicle, the employee must notify the employer before the end of the business day following the date the employee received notice of the loss of driving privileges. If this occurs, the employee is unable to perform assigned duties, will no longer meet the minimum qualification requirements for the position, and shall be terminated except in certain instances dealing with disabilities that may qualify for a reasonable accommodation under the Americans with Disabilities Act.

A district employee is bound by the same rules for computer usage as those that apply to state and federal employees. All activities on the computer system and

network may be monitored, intercepted, recorded, read, copied, or captured in any manner and disclosed in any manner, by authorized personnel. There is no right of privacy in the system. System personnel may give to law enforcement officials any potential evidence of crime found on USDA computer systems. Use of the system by any user, authorized or unauthorized, constitutes consent to this monitoring, interception, recording, reading, copying or capturing and disclosure.

Report unauthorized use to a USDA information systems security officer. The electronic tools referred to in this section should not be used to conduct personal business. Be aware of disciplinary action that will follow computer use for pornographic, gambling, or sites that promote hate or ethnic violence or civil rights violations. Do not send personal e-mails for questionable purposes such as so-called ethnic humor. Personal use should never interfere with individual duties and the ongoing operations of the office. The USDA, State of Oregon, and the District have a zero tolerance policy on visiting sites that are or could be child pornography. Any suspected incidents will be investigated for potential prosecution.

### ***Travel and Training***

All training and travel should be job-related and are at the discretion of the district board. Prior approval must be requested in written form and pre-approved by the District. See Exhibit 8.6, Request to Attend Conferences, Conventions, or Training Sessions. Receipts must be submitted for reimbursement.

### ***Tort Liability***

District employees, as agents of the State of Oregon, are covered under the State's tort liability law as long as they are carrying out their official duties with due care and in good faith. Tort claims are civil claims that are brought on allegations of wrongful death or injury to a person or damage to property. Law suits are typically based on negligence, breach of duty or nuisance. Providing employees are acting within the limits of their duties, the State Attorney General's office will defend them against suits. Contact ODA whenever the district is unsure about Tort liability.

### ***Employment Termination***

When a district employee leaves employment for whatever reason, it is a good idea to have them complete an Exit Interview, Exhibit 8.9. The District should also complete a Record of Exit, Exhibit 8.10, and send an exit letter to the employee leaving. Please refer to the examples provided as Exit Letter, Exhibit 8.11, and Sample Letter of Termination, Exhibit 8.12. Copies of these letters should be provided to the district so computer log-ins, etc., can be disabled. If they work with NRCS staff, notify them of computer, vehicle, space, or equipment use.

## ***Wrongful Discharge***

Wrongful discharge is a common claim made by fired employees. Such claims are made whenever an employee believes he or she was fired for a reason that is discriminatory or otherwise in violation of law.

Some of the laws restricting employee terminations are:

### **Federal Laws**

- National Labor Relations Act.
- Civil Rights Act of 1964 Title VII.
- Pregnancy Discrimination Act.
- Age Discrimination in Employment Act.
- Vocational Rehabilitation Act of 1963.
- Veterans Reemployment Rights.
- Vietnam Era Veterans Readjustment Assistance Act of 1974.
- Title VI of the Civil Rights Act of 1964.
- Executive Order 11246.
- Civil Rights Act of 1871.
- Civil Right Act of 1866.
- Fair Labor Standards Act.
- Occupational Safety and Health Act.
- Employee Retirement Income Security Act.
- Immigration Reform and Control Act.
- Consumer Credit Protection Act.
- Bankruptcy Act.
- Employee Polygraph Protection Act of 1988.
- Protection of Juror's Employment Act.

### **State Laws**

- Labor Relations.
- Oregon Civil Rights Law.
- Lie Detector Tests.
- Black Listing.
- Family Relationships.
- Workers' Compensation.
- Handicap.
- Safety and Health.
- Jury Service.
- Parental Leave.
- Garnishments.
- Wage Claims.
- Sex based wage claim.
- Miscellaneous.

## **Other Claims Available to a Fired Employee**

In addition to wrongful discharge, terminated employees often make the following claims as well:

- Intentional infliction of emotional distress.
- Defamation.
- Interference with ability to perform job duties.

## **Avoiding Wrongful Discharge Claims**

The following techniques should be followed by all districts to avoid or reduce liability:

- Establish “employment at-will” status.
- Terminate only for good cause.
- Avoid oral or written assurances.
- Train managers (whether board members or employees).
- Apply policies consistently.
- Utilize disclaimers.
- Avoid public policy claims.
- Discipline and discharge procedures.
- Documentation: keep good records.
  - Retention of documents.
  - Personnel records, evaluations, disciplinary records.
  - Payroll records.
  - Immigration records.
  - Pension and welfare plan information.
  - Job injuries causing time loss.
  - Memoranda.
- What goes in the personnel file.
- Right to inspect: Terminated employees have the right to inspect and obtain copies.
- Safety valves.
  - Suspensions.
  - Automatic review.
  - Appeal procedures.
  - Releases.
  - Exit interviews.

Remedies for the wrongfully terminated employee include:

- Back pay.
- Front pay.

- Reinstatement.
- Punitive damages.
- Attorney fees.

### **Contract Issues**

An employee who has an employment contract, either written or implied, may claim wrongful discharge if the firing did not comply with the terms of the contract. Such claims may be based on:

- Oral statements.
- Handbooks and policy manuals.
- Statements written in job descriptions, performance evaluations, even commendations.

### **Public Policy Issues**

Several other reasons for termination which courts will find unlawful because they are inconsistent with good public policy are as follows:

- Fulfilling a societal obligation: Jury Duty, Reporting safety violations.
- Pursuing a private right: Worker's compensation claim. Resisting sexual harassment.



## ***Exhibit 8.2 – Recommended Information for New Employee Package***

Employee Name:  
Social Security Number:  
District Employment Date:  
Supervisor's Name:  
Day-to-day Coordinator Name:  
Hourly Wage:  
Performance Review Date:  
Work Hours:  
PTO Starting Accrual Rate:  
Full-Time Hours per week:  
Part-Time Hours per week:

Listed below are the items that should be in the New Employee Packet and reviewed with the employee:

Employment Eligibility Verification (Form I-9), See government website for form [must be completed within 3 days of hire].

Confidential Emergency Information, Exhibit 8.3 [must be filled out during orientation].

Example of Application for Leave, Exhibit 8.5. [Also see Chapter 7 -- Determining Benefits and Leaves].

Federal and Oregon W-4s if different deductions desired. See government website for forms [must be returned within two days].

Position Description.

Pay increase eligibility dates and performance evaluation criteria.

Example of Request to Attend Conferences, Conventions or Training Sessions, Exhibit 8.7.

Employee Handbook.

Acknowledgement of Receipt of Employee Handbook, Exhibit 8.8.

Exhibit 8.4 – Employee Authorization for Reference Checks.

## ***Exhibit 8.3 – Employee Confidential Emergency Information***

### **EMPLOYEE CONFIDENTIAL EMERGENCY INFORMATION**

District should create or adopt a form that collects the following information on employees for use in emergencies.

Completing this information form is voluntary in an effort to assist you when you are unable to communicate for yourself.

Employee Name

Home Address

In case of emergency, contact:

Primary Contact:

Relationship to employee:

Home Phone ( ) Work Phone ( )

Secondary Contact:

Relationship to employee:

Home Phone ( ) Work Phone ( )

Name(s) of person(s) living at your residence (besides yourself)

Which hospital do you prefer?

Primary Doctor to call if we cannot reach a family member:

Name of Physician

Phone ( )

List current medications (and dosages)

List all allergies to medications

Blood Type

Additional Information:

Please provide any additional information, medical conditions, or instructions in which you would like for a paramedic or receiving hospital to receive on your behalf.

Organ donor?

Employee Signature

Date

**Exhibit 8.4 – Employee Authorization for Reference Checks**

**EMPLOYEE AUTHORIZATION FOR REFERENCE CHECKS**

Employees who leave our employment or are considering leaving our employment have the option to authorize the release of general or limited information to prospective employers. Please read this form carefully and indicate your preference.

If you **do not** authorize release of information **or** fail to submit a signed form authorizing release to the office, we will generally release only information regarding the job position(s) you held and dates of employment. Prospective employers may be advised of the option you have selected.

I **do** [  ] **do not** [  ] authorize \_\_\_\_\_ Soil and Water Conservation District to release information to prospective employers, including anyone claiming to be a prospective employer, regarding my employment.

This release of information covers my employment record in general, including information on the questions below. *By initialing* the lines below, I am *limiting release* of information to the following questions that are marked:

- \_\_\_\_\_ 1. Dates of employment;
- \_\_\_\_\_ 2. Position(s) held;
- \_\_\_\_\_ 3. The quality and quantity of my work;
- \_\_\_\_\_ 4. My attendance habits (excluding workers' compensation, pregnancy, disability FMLA and other protected absences);
- \_\_\_\_\_ 5. My relationship with co-workers, supervisors and managers;
- \_\_\_\_\_ 6. My attitude toward work (cooperative? positive? etc.);
- \_\_\_\_\_ 7. Reason for leaving and eligibility for rehire (would we rehire if we had to do it all over again?);
- \_\_\_\_\_ 8. Willingness to comply with our policies and standards;
- \_\_\_\_\_ 9. Strong and weak points;
- \_\_\_\_\_ 10. Other relevant information regarding my performance, skills, ability, suitability for employment sought, etc.

**Irrespective of the above, \_\_\_\_\_ Soil and Water Conservation District reserves the right to share information with prospective employers regarding whether any former employee has traits, behaviors or propensities that could make his/her employment in the particular position(s) sought unsafe for others or present a security risk.**

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Employee's Name (Print Name)

\_\_\_\_\_  
Date

***Exhibit 8.5 – Application for Leave***

**APPLICATION FOR LEAVE**

Create a form with the following information.

**Date Submitted:**

**Name of Employee:**

**District**

**Beginning Date and time**

**Ending Date and Time**

**No. of hours requested**

**From: Mo/Day/Yr**

**To: Mo/Day/Yr**

Employee Signature

Date

Supervisor Signature

Date

Leave Request    \_\_\_\_\_ Approved    \_\_\_\_\_ Disapproved

Director Signature

Date

**Exhibit 8.6 – Request to Attend Conferences, Conventions, or Training Sessions**

REQUEST TO ATTEND CONFERENCES,  
CONVENTIONS, OR TRAINING SESSIONS

The following information must be pre-approved by the District board before the pre-registration deadline. It is the responsibility of the employee making the request to submit this information.

Name: \_\_\_\_\_  
SWCD \_\_\_\_\_

Date of request: \_\_\_\_\_

- 1) Attach copy of the agenda and registration form to this form
- 2) Reason for attending the meeting:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 3) Time and date of leaving and returning to your assigned work location:

\_\_\_\_\_

- 4) Direct and indirect costs

- A. Registration costs \$ \_\_\_\_\_ Registration deadline: \_\_\_\_\_
- B. Transportation costs \$ \_\_\_\_\_
- C. Lodging costs \$ \_\_\_\_\_
- D. Meal costs \$ \_\_\_\_\_
- E. Miscellaneous costs \$ \_\_\_\_\_

- 5) Funding source

- A. District/Grant \_\_\_\_\_
- B. State \_\_\_\_\_
- C. Federal \_\_\_\_\_
- D. Other \_\_\_\_\_

- 6) Total costs \$ \_\_\_\_\_

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FOR OFFICE USE ONLY

Approved \_\_\_\_\_ Denied \_\_\_\_\_

Conference fee directly paid Yes \_\_\_\_\_ No \_\_\_\_\_

Approved by: \_\_\_\_\_ Date: \_\_\_\_\_

Comments:

\_\_\_\_\_  
\_\_\_\_\_

**Exhibit 8.7 – Acknowledgement of Receipt of Employee Handbook**

\_\_\_\_\_ **SOIL AND WATER CONSERVATION DISTRICT**

**Acknowledgement of Receipt of Employee Handbook**

I, **(print employee's name)** acknowledge that I have received the \_\_\_\_\_ Soil and Water Conservation District Employee Handbook. I understand this handbook is not intended to cover every situation which may arise during my employment, but is simply a general guide to the policies, practices, and benefits of the district.

I am aware that I am expected to read and follow the rules and conditions set forth in this handbook. I am also aware that I am expected to read and be familiar with any future updates to the information contained in this handbook.

I understand that the handbook is not a contract of employment and should not be deemed as such, and that I am employed at-will.

I understand district employment is based on the availability of funds designated for this purpose.

In addition, I acknowledge that I have received the District's New Employee Package including policies on Equal Employment Opportunity and Anti-Discrimination, Drug Free Workplace and Substance Abuse, Violence Free Workplace, Harassment and Sexual Harassment, and that I have been directed to read these documents and was offered an opportunity to ask questions about the contents. Further questions regarding this material may be directed to the district directors.

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

Supervisor Signature \_\_\_\_\_ Date \_\_\_\_\_

Distribution of this form after completion:

- Employee
- Supervisor
- Personnel file

## ***Exhibit 8.8 – Exit Interview***

### **EXIT INTERVIEW**

A face-to-face interview with an employee who has resigned could be a great opportunity for feedback. Some businesses do not recommend it, saying useful and candid information is seldom obtained by interviews especially if the employee may be hostile or vindictive toward management authority or other employees. They prefer to use a questionnaire. We have provided a sample of what could be used as either an exit interview or questionnaire.

Employee:

District:

Date of Employment:

Date of Separation:

To help us improve the quality of the district's services and to improve employee job satisfaction and working condition, we would like you to complete this questionnaire. Your candid remarks are vital. Responses will be shared only with the directors unless you request otherwise.

1. Do you have another job? (Yes No) If so, where?
2. Why did you decide to seek other employment?
3. Would you consider reemployment with the District? (Yes No) If no, why not?
4. Were you given complete and accurate information regarding job duties prior to your acceptance of your job with this district? (Yes No) Explain.
5. Were you provided the necessary orientation, training, and tools to successfully carry out your job duties here? (Yes No) Explain:
6. Do you feel supervision given you was effective and impartial? (Yes No) Explain:
7. What did you find to be most enjoyable about your job?
8. What did you like the least or find most frustrating about your job?
9. What changes would have made your job more desirable?
10. What changes would have improved the performance of your job?
11. Were your working conditions satisfactory? (Yes No) Explain:
12. Additional comments about the field office or about the District in general:
13. Would you like a copy of this given to anyone? (Yes No) If yes, name(s):
14. Additional comments:

### **Other Sample Questions**

- Tell us why you resigned.
- If you had the power to change your job, what would you do?
- Were there any hazardous duties or safety concerns associated with your job?
- Do you have any suggestions to improve the organization?
- Is there anything you want to tell us that we should know?
- Did you have all the right tools to do your job?
- Did you feel we supported you in the performance of your job?
- Do you have any suggestions for management?

Employee Signature and Date

Employer or Designee Signature and Date

Distribution: Personnel file

## Exhibit 8.9 – Record of Exit

### SAMPLE RECORD OF EXIT

1. NAME (last, first, middle)
2. SOCIAL SECURITY NUMBER \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_
3. TERMINATION DATE \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ mo day yr
4. TITLE
5. FORWARDING ADDRESS (For W-2) \_\_\_\_\_

6. REASON FOR TERMINATION (*check only those items that apply*)  
Voluntary (*the employee is the initiating party*): Attach letter of resignation from employee explaining reasons.  
Date Supervisor Notified: \_\_\_\_\_

Involuntary (*the employer is the initiating party*): Attach memo from supervisor explaining reasons.  
Date Employee Notified: \_\_\_\_\_

#### Voluntarily Quit:

- transportation problem
- homemaking
- death in family
- health
- moving from area: reason \_\_\_\_\_
- military service
- attend school
- going into own business
- declined to give reason for quitting
- failed to return from leave of absence on agreed date
- dissatisfied with hours, job, pay, benefits, etc.
- new job: new employer \_\_\_\_\_  
starting date \_\_\_\_\_ pay rate \_\_\_\_\_  
position \_\_\_\_\_
- early retirement - (own decision)
- other

#### Layoff:

- lack of work
- lack of funds
- job or project eliminated
- end of temporary employment
- other



***Exhibit 8.10 – Sample Exit Letter***

**District Letterhead**

January 1, 2007

Jane Goodbye  
123 Conservation Avenue  
Clean Water, OR 54321

Dear Ms. Goodbye:

This is to notify you your employment with Clean Water Soil and Water Conservation District will end effective January 14, 2004.

On behalf of the District directors, I thank you for your service to the District and wish you the best of luck.

Sincerely,  
Mary Smith, Chair  
Clean Water Soil and Water Conservation District

cc: Personnel File  
District Conservationist

The Clean Water SWCD is an equal opportunity employer and service provider.

**Exhibit 8.11 – Sample Termination Letter**

**District Letterhead**

January 1, 2004

Bob Absent  
123 Conservation Avenue  
Clean Water, Oregon 54321

Dear Mr. Absent:

This is to notify you that your employment with the Clean Water Conservation District will be terminated because of your continued absences from duty without officially approved leave, the most recent incident being the period December 1, 2005.

You failed to request leave from your supervisor as required by district policy and did not report your absence to the District office during that period. You have received sufficient warning that your continued absences without officially approved leave could result in our terminating your employment.

Unless you can present evidence supporting why I should not take this action, your termination will be effective January 2, 2006, at the close of business. If you desire to present evidence to me on your behalf, you can arrange to meet with me by calling **555-123-4567** or **555-123-7654**.

Sincerely,

Mary Smith, Chair  
Clean Water Soil and Water Conservation District

cc: Personnel File  
District Conservationist

**EMPLOYEE ACKNOWLEDGEMENT**

---

Employee Signature

---

Date

The Clean Water SWCD is an equal opportunity employer and service provider.

## ***Exhibit 8.12 – Checklist for Employment***

### **ITEM COMPLETED**

- ❑ Employee orientation was completed at the start of employment.
- ❑ Employee wage and benefits policies were reviewed.
- ❑ Forms were completed for employment.
- ❑ Employee handbook [personnel policies] and work rules were reviewed.
- ❑ Employee hours of work and PTO were reviewed.
- ❑ Job description and standards expected were reviewed.
- ❑ Discussed supervision and coordination of daily activities.
- ❑ Reviewed hierarchy [chain of command, organizational chart]
- ❑ Reviewed of workstation and equipment use policies, including vehicle use.
- ❑ Was an exit interview or termination letter used?
- ❑ All important employment documents have been filed in the personnel file.

## Chapter 9 – Conduct and Ethics

### ***Sample Standards of Conduct and Ethics***

A district program cannot be effective unless it is carried out by a district staff which, in addition to being technically competent, demonstrates professional integrity in its conduct. All district employees have a responsibility to perform their assigned duties, to support their supervisors and district board, and to uphold the public trust in soil and water conservation districts.

One of the best ways of maintaining these standards is by the examples set by district officials. All employees should be expected to maintain high standards of ethics and personal conduct. The following minimum requirements should be considered.

**Attendance.** Employees are expected to report for work and leave work at the time designated by the district. Planned leave time is to be arranged with the employee's supervisor in advance. Unexpected leave time is to be reported promptly to the supervisor prior to the beginning of the employee's work period, or as soon as possible, in cases of emergency.

**Conflict of Interest.** A district employee may not have other employment that conflicts with the interests of the district. This may include but is not limited to furnishing information or technical assistance that is not generally available to the public or work that is the same or substantially the same as the employee's regular duties. [See SWCD Guidebook for additional information.]

**Criminal Conduct.** Employees should not engage in criminal, dishonest, immoral, disgraceful, or other conduct prejudicial to the district.

**Diligence during Work Period.** Employees are expected to perform assigned duties during the entire schedule for which compensation is being received, except for reasonable time provided to take care of personal needs.

**Emergency Closings.** Closing the district office is a local decision. When the proper authorities assigned by the district declare a severe weather condition, employees will not be required to report for work. Employees may use accrued PTO or annual leave, if available, or leave without pay for such absences. The employee must inform the district office if they are not going to report to work. When conditions permit, the district may authorize employees to work at home and be paid for their time. Such conditions should be defined in policy.

**Financial Interest.** Employees should not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with the duties and responsibilities of a district employee or engage in a financial transaction that results from information obtained through employment.

**Harassment.** Harassment in any form is an unacceptable behavior and will not be tolerated. In general, harassment is any conduct that has the purpose or effect of unreasonable interference with an individual's work performance or creating an intimidating, hostile, or offensive working environment. [See Exhibit 11.1]

**Official Information.** Employees should not use or allow the use of official information gained through employment, which has not been made available to the general public, for furthering a private interest.

**Outside Employment.** Employees should not engage in any outside employment or other activity which interferes in any way with the full performance of duties and responsibilities of their position.

**Personal Telephone Use and Visitors.** Telephone use should be limited to business purposes. Local personal calls must be kept to a minimum and should not interfere with work responsibilities. Personal toll calls are not permitted. Receiving personal visitors is discouraged and should occur only briefly.

**Smoking.** Smoking is not permitted inside a USDA Service Center Field Office or any state or federal building or in any government vehicle. Smoking is permitted outside offices and buildings but only in designated areas. Smokers are required to dispose of all smoking materials in designated receptacles. Do not throw smoking materials on the ground.

**Solicitation, Selling, and Political Activities.** Solicitation, promoting a cause, selling, and political activity are all protected rights but not during working hours or when using district, state or federal equipment or facilities. An employee covered by the Hatch Act shall not be a candidate for public office in a partisan election. (See Exhibit 9.1, Hatch Act for State and Local Employees, and Chapter 4, Wages, Taxes, Benefits and Leave.)

**Drug and Alcohol Use.** Manufacturing, selling, attempting to sell, using, or possessing alcohol or other controlled or illegal substances that impair job performance or pose a hazard when use or possession occurs [except strictly in accordance with medical authorization] is prohibited. Reporting for work under the influence of alcohol, illegal drugs, or controlled substances in a manner that may impair work performance is also prohibited.

**Cost consciousness.** It is always appropriate to consider the cost of any work action or purchase of any material/equipment for the district. It is expected that employees will make prudent cost-saving decisions whenever possible or appropriate.

**Personal appearance.** Employees contribute to the feeling and reputation of the district in the way they present themselves. A professional appearance is essential to a favorable impression with customers. Good grooming and appropriate dress reflect employee pride and inspire customer confidence. Managers have the discretion to determine appropriateness in appearance.

**Appearance of Work Areas.** Work areas should be kept appropriately neat and clean, so as not to impede the completion of work or present any kind of hazard to the office environment.

**Electronic Communications Systems.** The district provides electronic communication systems to maintain superior communications both within the organization and with outside clients and vendors. You are encouraged to learn about these tools and how to use them. All employees and others outside the organization who may use the systems are expected to be aware of and support adherence to the following: electronic communications systems include computers, software, internet, electronic mail (e-mail), copiers, fax machines, telephones, voice mail, surface messengers, and various on-line services. These systems and any other informational, storage, or retrieval services that the organization provides are organization tools and are to be used for business purposes only.

The use of these systems is not private or confidential. The organization, within the bounds of current and future laws, reserves and intends to exercise the right to review, audit, intercept, access, and search these business systems at will, monitor data and messages within them at any time for any reason, and disclose selected contents without notice or other restrictions. Messages sent through these systems remain the property of the district. Any proprietary or confidential information of the district is not to enter the public domain through electronic transmissions.

Also, these systems shall not be used to receive copyrighted materials, trade secrets, inappropriate pictures or a sexual nature, proprietary information, or similar materials from outside the organization without prior authorization. Any messages or communications used through this system are subject to the district's anti-harassment, anti-discrimination, and non-solicitation policies.

Employees are expected to carefully compose and review the wording, tone, and content of any communications before transmission. Employees should check with their supervisor if they have any questions about the proper use of communication or software systems. All system users who discover violations of this policy are expected to notify their supervisors or managers immediately. Improper use or violation of this policy can result in disciplinary action, up to and including termination.

**Violence.** Acts of violence intended to cause damage or injury or which, in fact, result in damage or injury will not be tolerated and may result in disciplinary action up to and including dismissal. Such acts include, but are not limited to, engaging in a riot or civil disorder.

**Work Performance.** Employees are expected to meet established performance standards. Any conditions or circumstances in the work environment which prevent an employee from performing effectively are to be reported to the supervisor.

## ***Board – Staff Relations***

The board can reasonably expect the following from staff:

- Courteous responses to the public and to district cooperators and partners
- Prompt and courteous response/return of telephone calls
- Attention to details of meetings
- Complete, concise, and accurate information
- Honesty in individual and organizational relationships
- Judicious use of time
- Meeting agreed-upon deadlines, with notification if deadlines cannot be met
- Prompt response to requests for information
- A safe and harassment-free work place

The staff can reasonably expect the following from the board:

- Fulfillment of commitments within the agreed-upon deadlines
- Organization knowledge and ability
- Candid performance appraisal and assistance in performance
- Job description
- Clearly defined expectations of staff responsibilities
- Clearly defined chain of command, (from whom work assignments are to be taken)
- Support in controversial situations
- Easy access by telephone or visitation
- Loyalty, confidentiality, and sensitivity
- Incentives and rewards to promote and recognize accomplishments
- Opportunities for training

## ***Exhibit 9.1 – Hatch Act for State and Local Employees***

### **Hatch Act for State and Local Employees**

The Hatch Act applies to executive branch state and local employees who are principally employed in connection with programs financed in whole or in part by loans or grants made by the United States or a federal agency. Employees who work for educational or research institutions or agencies which are supported in whole or in part by a State or political subdivision of the State are not covered by the provisions of the Hatch Act.

Employees of private nonprofit organizations are covered by the Hatch Act only if the statute through which the organization receives federal funds contains language which states that the organization shall be considered to be a state or local agency for purposes of the Hatch Act, e.g., Headstart and Community Service Block Grant statutes. An employee's conduct is also subject to the laws of the state and the regulations of the employing agency. Additionally, employees should be aware that the prohibitions of the Hatch Act are not affected by state or local laws.

### **Permitted Activities**

Covered state and local employees **may** -

- run for public office in nonpartisan elections
- campaign for and hold office in political clubs and organizations
- actively campaign for candidates for public office in partisan and nonpartisan elections
- contribute money to political organizations and attend political fundraising functions

### **Prohibited Activities**

Covered state and local employees may not –

- be candidates for public office in a partisan election
- use official authority or influence to interfere with or affect the results of an election or nomination
- directly or indirectly coerce contributions from subordinates in support of a political party or candidate

### **Political Activity [“Hatch Act”]**

Hatch Act Unit

U.S. Office of Special Counsel

1730 M Street, N.W., Suite 201

Washington, D.C. 20036-4505

Tel: (800) 85-HATCH (800) 854-2824 or (202) 653-7143

Requests for Hatch Act advisory opinions (only) may be made by e-mail to:

[hatchact@osc.gov](mailto:hatchact@osc.gov).

## Chapter 10 – Safety and Accidents

Every person working for a district has a right to a safe place in which to work so energy can be devoted to work without undue worry about dangerous conditions. The district must establish and insist upon safe methods and practices at all times. Only under such circumstances can the relationship between the district and its employees be harmonious and safe. This responsibility must be accepted by every person who participates in the affairs of the district, no matter what their function.

### ***Employee Safety***

The Federal Occupational Safety and Health Act was passed by Congress in 1970. Under the act, employers engaged in a business that affects commerce must provide employees with a safe and healthful place to work, free from recognized hazards that are likely to cause death or serious physical harm. Federal, state, and local governments are not covered by the general provisions of this act; but federal agencies are subject to special duties, and state and local governments are covered indirectly.

Some states have passed their own occupational safety and health legislation that may have an impact on districts. In Oregon, OR-OSHA proposes to adopt new Oregon Administrative Rules for safety committees and safety meetings as required by House Bill 2222 passed into law by the 2007 Oregon Legislature. The changes to the existing rule, OAR 437-001-0765, are titled Rules for Workplace Safety Committees and Safety Meetings. All employers are affected by this new rule because it applies to every public and private employer operating in the state of Oregon subject to OR-OSHA jurisdiction.

Detailed requirements for establishing and administering safety committees or for holding safety meetings are specified in the rule. Contact Ron Haverkost, OR-OSHA Central Office @ 503-947-7421 or email at [Ronald.l.haverkost@state.or.us](mailto:Ronald.l.haverkost@state.or.us) for more information.

Although a specific law may or may not cover a district, it should be the philosophy and policy of each district to provide a safe and healthful working environment for all of its employees. What a district does to promote safety may vary according to need, from issuing a basic policy statement to establishing specific rules and regulations and providing safety equipment. The following sample safety policy statement can be adopted as is or modified to fit a particular situation.

- People are our greatest asset -- their safety is our greatest responsibility.
- It is the policy of our district that every employee is entitled to a safe and healthful place to work. It is our desire and intention to provide a safe work place, safe equipment, and proper materials, and to establish and insist upon safe methods and practices at all times.

- It is a basic responsibility for all to make the safety of human beings a part of their daily, hourly concern. This responsibility must be accepted by each one who conducts the affairs for the District.
- Employees are expected to use any safety equipment provided. Established rules of conduct and rules of safety shall be observed.
- The joint cooperation of all employees in the observance of this policy will provide safe working conditions and accident-free performance to our mutual advantage. (See Exhibit 10.2 for sample Safety Checklist).

Further Oregon Safety information is available from Oregon's Occupational Safety and Health Administration:

OR-OSHA

P.O. Box 14480

Salem, OR 97309-0405

503-378-3272 or 1-800-922-2689

[www.orosha.org](http://www.orosha.org)

### ***Substance Abuse Policy and Treatment***

The District must be committed to maintaining a safe work environment that is free from the use, abuse, or effects of alcohol, drugs, or controlled substances. Employees who are under the influence of drugs or alcohol may adversely affect other employees and the public at large. In accordance with the Federal Drug-Free Workplace Act of 1988, employees are required to report to their supervisors any criminal drug-statute convictions for violations occurring in the workplace or on work time within five days following such a conviction.

Early detection and professional help will greatly increase effective treatment. The supervisor should not assume the role of behavioral counselors nor make moral judgments. The supervisor's role is to be aware of the symptoms and to advise employees where they can go for assistance. Evidence of substance abuse may be detected by behavior that interferes with job performance, an increase in absenteeism, and/or accidents on the job. Sources of information include: Oregon Department of Human Services:

Dept. of Human Services  
Mental Health & Addiction Services  
500 Summer St. NE E86  
Salem, OR 97301-1098  
503-945-5763

<http://www.oregon.gov/DHS/ph/>

See Exhibit 10.1 for a sample Substance Abuse policy.

## ***Driving and Vehicles***

It is important that a policy be devised discussing the ramifications of driving district vehicles in a safe manner. See Exhibit 10.2 for a detailed discussion of driving issues and Exhibit 10.3 for a sample cell phone policy.

## ***Accident Reporting***

It is expected that in the case of any kind of accident, whether incidental or catastrophic, a report of such incident will be made immediately (or as soon as possible) to an employee's direct supervisor. In any kind of situation requiring medical assistance beyond simple first aid (i.e. bandage, cleaning minor wound, etc.), a Report of Injury Form should be completed (typically an 801 Form found on the OR-OSHA website). See Exhibit 10.4 for a sample Accident / Incident Report form.

## ***Workplace Violence***

The district should have written policy on preventing or dealing with workplace violence issues. Before an incident has occurred or in the middle of an escalating situation, it is helpful to have a policy in place addressing contingency plans. Following is a sample policy regarding such issues:

- **(District)** recognizes the importance of a safe workplace for employees. A work environment that is safe and comfortable enhances employee satisfaction with work, as well as employee productivity.
- However, situations may occur that present a risk of harm to employees and others. All employees have an obligation to report any incidents that pose a risk of harm to employees or others associated with the organization or that threaten the safety, security, or financial interests of the organization. Employees should make such reports directly to **(designated position)**.
- All information related to the reports, including the name of the reporting employees, will be kept as confidential as possible under the circumstances. We will notify the reporting employee of any action we take in response to the report.
- We may, out of business necessity, conduct an investigation of a current employee when the employee's behavior raises concerns about work performance, reliability, honesty, or potential threat to the safety of co-workers or others. An employee investigation may include investigation of criminal records and a search of the organization's property such as desks, work areas, lockers, file cabinets, voice mail systems, and computer systems.

## ***Exhibit 10.1 – Sample Substance Abuse Policy***

The objective of this policy is to provide a workplace and environment free from the effects of substance abuse. Furthermore, the \_\_\_\_\_ SWCD has a responsibility to our employees, to those who use or come into contact with our products and services, and to the general public to ensure safe operating and working conditions. To satisfy our drug free workplace objective and meet these responsibilities, we must establish a work environment where employees are free from the effects of drugs, alcohol, or other impairing substances. Accordingly we have adopted this substance abuse policy.

The following conditions and activities are expressly prohibited on our premises or property or during work time or while representing us in any work-related fashion:

- Manufacturing, selling, attempting to sell, using, or possessing alcohol or other controlled or illegal substances that impair job performance or pose a hazard when use or possession occurs (except strictly in accordance with medical authorization);
- Reporting for work under the influence of alcohol, illegal drugs, or controlled substances in a manner that may impair work performance.

If your doctor prescribes over-the-counter or pharmaceutical drugs, you're responsible for ensuring that your ability to work safely will not be affected by taking the medication. If you are in doubt, please discuss this with the **(designated position)** before beginning work. Any medical issues discussed will be kept confidential.

If you have a problem with drugs and/or alcohol and wish to undertake rehabilitation, you will be granted an unpaid leave of absence for this purpose. It is your responsibility to seek help before the problem adversely affects your work performance or results in a violation of this policy. If you need assistance in seeking this help, you may talk to the **(designated position)**. No one will be discriminated against for undertaking rehabilitation.

For purposes of this policy, having any detectable level of an illegal or controlled drug in one's system while covered by this policy will be considered to be a violation. Where we have a reasonable suspicion that an employee is in violation of this policy, the employee will be required to submit to testing to determine presence of, use of, or involvement with alcohol or drugs. We reserve the right to determine whether reasonable suspicion exists.

The following definitions apply:

Reasonable suspicion is defined as specific describable observations concerning such circumstances as the work performance, appearance (including, for example, noticeable odor of an alcoholic beverage), behavior, or speech of the employee, or as being involved in an accident on organization premises that results in physical injury or property damage.

Under the influence is defined as any detectable level of alcohol or drugs in an employee's blood or urine, or any noticeable or perceptible impairment of the employee's mental or physical faculties due to illegal or controlled substances.

Controlled Substances are defined as all forms of narcotics, depressants, stimulants, hallucinogens, and cannabis whose sale, purchase, transfer, use, or possession is prohibited or restricted by law.

Over-the-counter drugs are defined as those that are generally available without a prescription from a medical doctor.

Prescription drugs are defined as those drugs that are used in the course of medical treatment and have been prescribed and authorized for use by a licensed practitioner/physician or dentist.

Any employee who is found to be in violation of this policy, who refuses to submit to testing, or who refuses to cooperate, or attempts to subvert the testing process will be subject to corrective action, up to and including termination. We also reserve the right to involve law enforcement officials for any conduct that we believe might be in violation of state or federal law.

If a professional assessment is made that you have a problem with alcohol or drugs, your continued employment may be conditioned upon your entering into and completing a treatment program (including follow-up recommendations) approved by the organization. You also may be required to sign and live up to the terms of a performance agreement in order to demonstrate your commitment to rehabilitation and staying alcohol- and drug-free. This course of action is likely if you come forward on your own and ask for help in overcoming your problem. If you are caught selling, using, or being under the influence of drugs or alcohol while at work, we may terminate your employment without offering you the opportunity to participate in a treatment program.

*NOTE: If you are a federal contractor subject to the Drug Free Workplace Act or have a drug-testing program, you will need to add additional language here. Language for that purpose follows. Legal counsel should be consulted to ensure compliance with federal and state regulations regarding drug testing.*

## Testing Paragraphs

If you voluntarily request assistance in dealing with a personal drug and/or alcohol problem, you may do so through the {Employee Assistance Program/Human Resources Manager}. The request for assistance will not jeopardize your employment as long as this assistance is sought before work performance has deteriorated or disciplinary problems have begun. Other treatment programs for drug and alcohol problems may be available through our health insurance coverage.

*NOTE: Use the following paragraph to authorize post-treatment monitoring and testing:*

As a result of corrective action arising from a drug or alcohol problem, you may be required to participate in a drug or alcohol treatment program. If so required, you will regularly be evaluated for drug and alcohol use by a professional. When such an evaluation is scheduled, we will pay the cost. You may also be required to participate in follow-up care as part of a comprehensive alcohol and drug treatment program. Depending upon the nature of the conduct that led to your mandated participation in an alcohol and drug treatment program, you may be required to submit to random or unannounced screening for alcohol and/or drugs for a specified period of time. You may also be required to meet various performance standards that are imposed as a condition of continuing employment.

*NOTE: Use the following paragraph to authorize post-accident testing:*

If you are involved in a job-related accident resulting in property damage in excess of **\$(amount)**, or physical injury requiring off-site medical attention, you will be required to submit to testing to determine the presence of any involvement with alcohol or drugs. We may waive the requirement if we determine, in our discretion, that the accident could not have been caused by alcohol or drug use.

*NOTE: Use the following paragraph to authorize testing based upon return from leave/promotion:*

You will be subject to testing upon your return to work from a leave of absence of any kind that has lasted longer than 45 days, and upon transfer or promotion to another position.

*NOTE: Use the following paragraph to authorize random testing:*

You may be required to submit to testing on a random or unannounced basis to determine the presence of, use of, or involvement with drugs or alcohol. This may include testing by random selection, testing of an entire department or work unit, or testing of specific identified categories of employees as a group.

*NOTE: Use the following paragraph if you need to test under government regulations:*

We will also conduct testing as required or recommended under the provisions of any state or federal government regulations. If you are within a regulated group requiring testing you will be required to abide by policy as well as any government programs.

*NOTE: Use the following paragraph to provide a right to re-test in the event of a positive test result:*

When being tested, you may request that any sample be split into two parts, with one part tested and the other retained by the testing laboratory for future re-testing in the event of a positive test result. If you request a re-test, it will be at your expense and must be conducted by a laboratory that is acceptable to us. A list of approved laboratories will be provided upon request.

*NOTE: Use the following paragraph to require employees to report problems with the collection process:*

If you believe that your specimen was not collected in accordance with established procedures, you must report any deficiencies within 24 hours of the collection. Deficiencies reported after 24 hours have expired and will not be considered.

## ***Exhibit 10.2 – Driving/Vehicle Policy***

### **SAMPLE DRIVING/VEHICLE POLICY**

Driving is among the most hazardous tasks performed by employees and volunteers of [District]. Therefore, it is the policy of the [District] that employees and volunteers will follow safe driving practices. Safe driving practices include steps to ensure the driver's total concentration and safe operation of vehicles, such as determining clear directions before departing, refraining from operating equipment such as cell phones and radios while the vehicle is moving, and not operating a vehicle when the driver's ability to react is impaired. Drivers are expected to follow defensive driving principles, Oregon laws and regulations to prevent accidents in spite of unsafe driving by others and/or adverse driving conditions.

Managers are responsible for enforcing this policy, and shall ensure all employees and volunteers who drive are notified of this policy and the potential consequences of policy violations.

#### **PROCEDURES**

[District] shall allow only drivers that meet the following eligibility criteria to drive on their behalf. **[In larger entities, the department may delegate the responsibility to a specific position or individual to see that these criteria are met.]**

#### Job Applicants

1. When any position is being filled for which driving is an essential function, the driving record for the previous five (5) years shall be evaluated according to the following procedure:
  - a. Any certification of eligible applicants sent to department managers for selection processes shall contain a reminder to conduct a driving record check through DMV prior to finalizing an employment offer. **(NOTE: Employers may also request that a five (5) year driving history be provided with the application or provided at the time of interview).**
  - b. Hiring managers may offer employment contingent upon receiving a successful driving record check. However, it is suggested that the applicant's driving record is checked prior to a contingent hiring offer whenever possible.
  - c. If the applicant being considered for hire is from outside the State of Oregon, the hiring manager must request a copy of the applicant's driving record to be sent by fax or mail.
2. Human Resources will complete the driving record check and send an email to the appropriate department manager with the results. If the driving record does not meet [District] standards, the recommendation not to hire the applicant, will be made.

3. If the supervisor requesting the hire wishes to contest this recommendation, an appeal may be made to the [District] Department Head, Administrator, or Manager. A record of DUI, moving violations and/or accidents shall be considered in determining whether an applicant is acceptable.

#### [District] Employee/volunteers

4. Any [District] employee/volunteer must meet the following criteria in order to be allowed to drive on [District] business:
  - a. Must possess a valid Oregon driver's license or provide an alternate means of transportation that is approved by the Manager/Administrator.
  - b. Be at least 18 years old.
  - c. Possess a valid Commercial Driver's License if driving a vehicle requiring such.
  - d. If involved in an at-fault accident on [District] business, an employee/volunteer is required to complete a defensive driving course within six (6) months of the accident [recommended].
  - e. If in possession of an Oregon/Washington [or other State] driver's license, sign a release form allowing the [District] access to his/her motor vehicle records.
  - f. If driving their personally owned vehicle, provide proof of insurance at the inception of this policy or when driving responsibilities that are covered by this policy begin and at any time there is a change to the policy, to their department manager evidencing liability limits no less than the State required minimum of 25,000 single occurrence/50,000 annual aggregate.
  - g. In addition to the above requirements any [District] employee/volunteer holding a position that requires driving as part of the job duties shall maintain an acceptable driving record.
  - h. The [District] shall establish an account with DMV and monitor the employee/volunteer's driving record by reviewing any "flagged records." If a violation that occurs on work time falls into the categories noted in Appendix A, the [District] shall take appropriate action.

#### Discipline

5. Employee/volunteers who are found to have violated this policy may be subject to disciplinary action up to and including termination. It is the intent of this policy that unsafe behavior be identified and corrected. Should discipline become necessary, it shall follow the [District] Personnel Policy/Manual and union contracts, as applicable.

#### Other Drivers

6. In addition to [District] employee/volunteers, the following people can be allowed to drive vehicles on [District] business:
  - a. An officer or agent representing the [District].
  - b. Another person designated to act on behalf of the [District].

Drivers who are not [District] employee/volunteers must meet the following criteria in order to be allowed to drive on [District] business:

- a. Possess a driver's license valid in the State of Oregon; and
- b. Be at least 18 years old; and
- c. Possess a commercial driver's license if driving a vehicle requiring such; and
- d. If driving their personally owned vehicle, provide proof of insurance to the department manager of the department within which they work evidencing liability limits no less than the State required minimum of \$25,000 single occurrence/\$50,000 annual aggregate.
- e. Obtain permission from Manager/Administrator within the area they are assigned.

### **Driver Responsibilities**

The following responsibilities apply to anyone who drives any vehicle on [District] business:

1. Drivers shall inspect vehicles at the beginning of each shift or prior to each trip to ensure that the vehicles are in safe operating condition prior to their use. This should include tires properly inflated (i.e., not visibly deflated), clean windows, mirrors properly positioned and all lights in working order.
2. Drivers shall comply with all applicable state and local driving laws, parking regulations, and all [District] and departmental safety policies and rules. All drivers and passengers shall wear a safety belt and the **automobile's headlights must be on when the vehicle is in motion.**
3. Drivers will drive according to the road conditions during inclement weather. Drivers will know how and be prepared, in advance, of bad weather/adverse weather and road conditions.
4. Drivers **shall be held personally responsible** and liable for any tickets received while driving a vehicle on [District] business. All tickets for moving violations and/or parking fines received while driving [District] vehicles shall be paid or otherwise resolved promptly by the driver. Drivers shall notify their supervisor within 48 hours of receiving any citation while in an [District] vehicle.
7. For photo radar or other citations issued against the vehicle's registration, the employee/volunteer's department will complete the "Affidavit of Non-Liability" or similar document issued with the citation to identify the driver. The driver shall be personally responsible and liable for promptly paying the fine or otherwise resolving the citation.
8. In the **event of an accident** on [District] business, drivers shall immediately contact their supervisor, and, if driving an [District] vehicle, follow all [District] instructions/procedures for reporting accidents.
9. A **driver whose license has been suspended** or revoked shall immediately notify his/her supervisor.
10. For employees who are required to drive or maintain a valid driver's license as part of their official duties, driving record convictions may be considered as grounds for disciplinary action up to and including dismissal, whether the

offenses and infractions occurred during or outside work hours. Volunteers with driving record convictions on or off the job may be subject to reassignment or removal from volunteer placement.

11. Drivers shall ensure that any passengers who ride with them in an [District] vehicle or in any vehicle while on [District] business are authorized by their supervisor. Drivers shall not transport passengers unless the passengers are wearing safety belts or other restraint devices in accordance with Oregon Revised Statutes.
12. In the event of a citizen emergency that requires the use of an [District] vehicle, managers can grant prior authorization under specific circumstances they establish. If an employee/volunteer on [District] business encounters a stranded motorist, please be aware:
  - a. there is no obligation to stop and render assistance,
  - b. you should consider all objective circumstances regarding your own personal safety before choosing to stop,
  - c. the only authorized action is to help connect the motorist with appropriate roadside assistance.
13. Drivers shall not drive [District] vehicles or private vehicles for [District] business when they are required to take medication that may impair their ability to safely operate a moving vehicle. If in doubt, the employee/volunteer should first obtain approval from his/her physician that it is safe to drive while taking the medication. If the employee/volunteer comes to work but due to the medication cannot drive, the employee/volunteer shall immediately inform their supervisor and ask for an alternate work assignment. If there is no work available, the employee/volunteer may be assigned to another department or sent home.
14. Employees/volunteers are expected to use good judgment at all times while driving on behalf of the [District]. In circumstances where the employee/volunteer is uncertain if he/she should be operating or continue to operate a vehicle (such as prescription or over-the-counter medication, extended or continuous shifts, end-of-day long distance travel, fatigue, poor weather or road conditions) the employee/volunteer is expected contact their supervisor/manager to assist in making the safest determination, of whether to continue to drive or not.

#### Using Cell Phones while Driving

#### **See additional cell phone policy in Exhibit 10.3.**

15. The [District] encourages the safe use of cellular telephones by employee/volunteers who use these tools to conduct business for the [District]. However, when employee/volunteers are operating a vehicle, driving is the first responsibility. Employee/volunteers who use cell phones while on [District] business should refrain from making or receiving business calls while driving. If an employee/volunteer needs to make or receive a business phone call while driving, the employee/volunteer should make sure the vehicle is stopped and that he/she is parked properly and off the roadway to make or receive the call. Employee/volunteers must use

common sense when using a cell phone and operating a vehicle. Concentration on driving should be the highest priority. Talking on a cell phone while driving, like adjusting the radio, eating, or writing a note, makes it difficult to concentrate on driving. Therefore, if the content of a call impairs concentration, postpone the call until you can stop.

## **Vehicle Use**

### [District]-owned/supplied vehicles

The [District] provides vehicles for use by qualified drivers to conduct official [District] business in the course and scope of their job and/or to maintain the ability to respond to [District] business outside the employee/volunteer's normal work hours when special equipment or tools are available in or on the vehicle. [District] vehicles shall not be used for personal business. Use of [District] vehicles to commute to and from work, except as stated above, is prohibited, unless approved in advance by the Department Head/Elected Official.

### Privately-owned motor vehicles

The [District] allows use of privately owned motor vehicles to conduct official [District] business. A privately owned motor vehicle used for [District] business must be a conventional, at least four-wheel vehicle, and be in safe mechanical condition that is adequate to provide safe transport for the road and weather conditions. Vehicle equipment must conform to State of Oregon requirements. A motor pool vehicle or rental shall be used when a personally owned vehicle does not meet these standards. Vehicle registration and insurance must be current.

## **Insurance requirements**

The driver of a privately-owned vehicle used to conduct official [District] business must be insured against liability [person and property] in an amount not less than the minimum requirements of the State of Oregon.

Mileage reimbursement for the use of a privately owned motor vehicle is considered full payment (including deductibles, depreciation, insurance, maintenance, and fuel and operating costs) for its use.

The vehicle owner is responsible for any comprehensive and collision coverage the owner may elect to carry.

## Out-of-State rental vehicles

The [District] provides excess liability coverage to supplement the coverage automatically provided by car rental companies. However, the Oregon Tort Claims Act does not apply outside of Oregon. For that reason, **drivers shall purchase the offered insurance** through the rental company. Excess liability coverage, collision coverage deductibles, and other charges not covered by the car rental company insurance will not be paid by the [District] if an accident occurs when the vehicle is used outside the scope of [District] business, (e.g., on an out-of-state trip where a rental vehicle is used for a non job-related side trip). Travelers are required to know the driving laws for any state they drive in, apply the criteria of common sense, propriety, and consider the relationship to business purpose to the use of rental vehicles and transporting passengers while on [District] business.

## **Passengers**

Only authorized passengers are allowed to ride in [District] vehicles and other vehicles while in use for [District] business. Authorized passengers are:

1. [District] employees conducting [District] business;
2. Officer and agents representing the [District];
3. Volunteers acting on behalf of the [District];
4. Vendors and contractors working on behalf of the [District];
5. Participants in official [District] business, training, tours, and programs;
6. Representatives of other governmental agencies working with the [District];
7. Anyone with prior authorization by the department manager or with specific authorization by the [District] Administrator, Elected Officials, or other Manager/Administrator with authority to grant such approval.

## APPENDIX A

### Requirements of an Acceptable Driving Record

**These requirements become effective on the effective date of this policy.**

1. No class "A" infraction convictions during the past thirty-six (36) months and no more than one (1) class "A" infraction conviction between the past (36) and (60) months.
2. No more than one (1) class "B" infraction conviction during the past twelve (12) months and no more than two (2) class "B" infraction convictions during the past thirty-six (36) months.
3. No more than two (2) class "C" infraction convictions during the past twelve (12) months and no more than three (3) class "C" infraction convictions during the past thirty-six (36) months.
4. Demonstrated ability to maintain a driver's license without suspensions for the past sixty (60) months.
5. No felony or misdemeanor driving convictions within the past sixty (60) months.

### EXAMPLES OF VIOLATIONS LISTED BY CLASSIFICATION

#### CLASS "A" INFRACTION

- Failure to obey a traffic flagger
- Driving while suspended (infraction)
- Careless driving (accident involved)
- Speed racing
- Speeding (30+ MPH over posted limit)
- Failure to stop for school bus

#### CLASS "B" INFRACTION

- Passing in a no pass zone
- Failure to drive on right side of the road
- No operator's license
- Careless driving (no accident involved)
- Failure to obey a traffic control device
- Driving uninsured

#### CLASS "C" INFRACTION

- Failure to use traction devices
- Defective headlights
- Illegal U-turn
- Failure to yield to pedestrian in crosswalk
- Speeding (11-20 MPH over the limit)

#### CLASS "D" INFRACTION

- Impeding the flow of traffic
- Failure to signal lane change
- Failure to display license plates
- Speeding (1-10 MPH over the limit)
- Failure to use safety belts
- Failure to change information on driver's license

**CLASS "A" MISDEMEANOR**

- D.U.I.
- Reckless endangerment of a highway worker
- Providing false information to a police officer
- Hit and run (property damage)
- Reckless driving
- Driving while suspended

**CLASS "B" MISDEMEANOR**

- Providing false information regarding liability insurance
- Providing false information on accident report

**CLASS "C" MISDEMEANOR**

- Failure to display a driver's license
- Failure to return suspended license

**CLASS "C" FELONY**

- Hit and run (injury)
- Attempting to elude a peace officer
- Driving while suspended/revoked

### ***Exhibit 10.3 – Sample Cell Phone Policy***

Where job or business needs necessitate immediate access to an employee, the company may provide/require a business cell phone for work-related communications. It is expected that this phone will not be used as a substitute for a personal cell phone during work hours, but is for business use only. Business cell phones are not to be used for any non-work related purposes to access videos, pictures, news updates, stocks, sports or any other such information. Any such use of personal phones for these purposes must be limited to breaks and lunches. Any phone charges incurred by an employee for the personal use of a company provided cellular phone will be the sole responsibility of the employee. Organization issued cellular phones must be used with care to protect from loss, damage or theft, and must be returned immediately upon separation from employment.

Personal calls during the workday using personal cellular phones can be distracting to others and interfere with employee productivity. Therefore, it is expected that employees will refrain from unnecessary use of cell phones while on the job.

The use of a cell phone while driving may present an unsafe condition for the driver, other employees and the general public. Therefore, the organization strongly discourages the use of cell phones while driving. In cases where a cell phone call seems necessary, employees must adhere to all federal, state and/or local rules and regulations regarding such to help ensure the safe operation of both company and private vehicles. If a driver is using a cell phone while driving, and has an accident, any costs, fees and fines shall be solely the responsibility of the driver.

Employees should not use hand held cell phones for business purposes while driving. Should an employee need to make a business call while driving, a lawfully designated area to park should be located and the individual should pull over to make the call. Employees may use hands-free cell phones to make business calls, but only in emergency situations. Such calls should be kept short and should the circumstances warrant (e.g., heavy traffic, bad weather, unfamiliarity with area), the employee should locate an appropriate area to pull over to continue the call.

**Exhibit 10.4 – Accident / Incident Report**

[DISTRICT]

**ACCIDENT/INCIDENT REPORT**

Employee's name: \_\_\_\_\_ Position title: \_\_\_\_\_

Department: \_\_\_\_\_ Date of injury: \_\_\_\_\_

Time: \_\_\_\_\_ am/pm

Did the accident/injury happen on district premises?  Yes  No

If yes, exact location of accident: \_\_\_\_\_  
\_\_\_\_\_

If no, location and address: \_\_\_\_\_  
\_\_\_\_\_

Did the injury require medical treatment?  Yes  No

When? \_\_\_\_\_ Where? \_\_\_\_\_  
\_\_\_\_\_

By whom? \_\_\_\_\_

Was the employee able to return to work the same day or following workday?

Yes  No

Was the employee hospitalized?

Yes  No

Is the employee aware he/she may complete a workers' compensation claim?

Yes  No

Name(s) of witness(es): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe accident as told by employee (what was employee doing when injured, what objects, machines, or materials were involved, etc.).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Record any discrepancies/variations in witnesses' accounts of accident.

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Reasons for unsafe act (lack of knowledge, disregard for rules, etc.):

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---

---

Reasons for unsafe condition (no funds, not aware of condition, etc.):

---

---

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Investigation reveals that accident was:

- |                          |                           |                          |                                |
|--------------------------|---------------------------|--------------------------|--------------------------------|
| <input type="checkbox"/> | Beyond control of injured | <input type="checkbox"/> | Beyond control of organization |
| <input type="checkbox"/> | Preventable by injured    | <input type="checkbox"/> | Preventable by organization    |

What practical action will be taken by management to prevent recurrence?

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*Supervisor Signature*

---

*Date*

# Exhibit 10.5 – Safety Checklist

## SELF INSPECTION CHECKLIST

LOCATION:

Inspection Completed By:

Date:

	Yes	No	N/A		Yes	No	N/A
<b>Building Exterior</b>				<b>Fire Extinguishers</b>			
Building address clearly marked	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Proper type extinguishers provided	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Building accessible in an emergency	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Extinguisher are readily accessible	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fire hydrants accessible	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Extinguisher inspected in last year	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fire Dept. connection marked/accessible	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
Building appears to be in good repair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Electrical</b>			
Building free of vandalism	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Electrical system operating properly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exterior walls in good condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Electrical panels free of obstructions/locked	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exterior windows in good condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Wall receptacles and switches have plates	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water pipes properly insulated for cold	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Boxes and panels free of combustibles	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chimneys/stacks in good condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Electrical hoses and panels covered	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Walkways maintained	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	All circuit breakers/fuses clearly marked	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parking lots maintained	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Extension cords properly used	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Combustibles stored away from bldg.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	GFCI's on receptacles near water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vegetation cut back from the bldg.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
Trash stored away from building	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Fire Alarm/Detection Systems</b>			
Exterior lights operating properly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Tested within the last month	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fencing in good condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	System free of trouble/alarm signals	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gates in good condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
				<b>Automatic Sprinkler Systems</b>			
<b>Fire Doors</b>				System tested within the last 3 months	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fire Doors are in working condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	All sprinkler supply valves open	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fire Doors are kept closed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Sprinkler controls free of obstructions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				18" clearance below sprinkler heads	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>General Housekeeping</b>				Caps on outside fire dept. connection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Building clean and well maintained	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
Storage areas neatly arranged	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Building Evacuation Features</b>			
Metal containers for oily/solvent soaked rag	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Exit doors clearly marked	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trash emptied daily	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Travel routes clearly marked	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stairs/halls clean & free of obstructions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Exit doors in working condition	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				Exit door accessible & unlocked	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Heating &amp; Air Conditioning</b>				Emergency lights are working	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Heat and A/C operating properly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Evacuation diagrams posted in all areas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mechanical rooms kept locked	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
Mechanical rooms free of storage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Special Hazards</b>			
All vents clear of combustibles	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Is the building free from the following:			
Use of space heaters limited	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Flammable liquids storage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				Compressed gas storage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Smoking</b>				Commercial type cooking	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Workplace smoking ban enforced	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Large computer facility	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				Other hazardous chemicals/operations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Roof Conditions</b>							
Antennas etc are secure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
Gutters are clean and downspouts operate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>All "NO" answers which can not be corrected immediately should be forwarded to a supervisor</b>			
No evidence of pooling water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
Clear of debris and vegetation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
No evidence of reduced snow load capacity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Please comment on any "SPECIAL HAZARDS" noted during the inspection</b>			

Please explain all "NO" answers:

# Chapter 11 – Non-discrimination and Harassment

## ***Equal Employment Opportunity***

Although Oregon law does not require an EEO statement in the personnel manual, including it declares the district's awareness of and commitment to the applicable civil rights laws. It assures the employees they will be treated fairly, equitably, and without discrimination.

Sample statements the district might choose to include in this section are stated below.

The \_\_\_\_\_ Soil and Water Conservation District is committed to provide equal employment opportunities to all persons regardless of race, color, religion, gender, sexual orientation, national origin, marital status, physical or mental impairment that substantially limits one or more major life activities, veteran's status, injured worker status, age, or any other characteristic protected by applicable law as a protected class or protected activity. The district will administer all programs in a nondiscriminatory manner. Discrimination or harassment based on any of these factors is inconsistent with our philosophy, core values, and will not be tolerated by directors, employees, vendors, and customers.

The district requires all employees cooperate fully to ensure the fulfillment of this commitment in all actions and decisions, including:

- Recruitment, advertising, selection, and hiring
- Job placement
- Compensation and benefits
- Selection for promotions, pay increases, and training.

Decisions and actions toward current or prospective employees shall be based on the personnel policies contained in this handbook, and on such factors as quality and quantity of work completed; proven skills; growth potential; willingness and ability to follow instructions; initiative; dependability; demeanor; and the quality of interactions with directors, other employees, vendors, customers, and the public.

The district will make "reasonable accommodation" for the known physical or mental disabilities or practices of one's religious beliefs unless it would create an undue hardship or be clearly detrimental to the district's ability to carry out its mission.

The district will provide a safe environment where the dignity of each individual is respected. All forms of harassment will be prohibited, including sexual or showing disrespect to persons based on their race, gender, religion, creed, age,

disability, or any other protected class. Such harassment shall be avoided because of its potential employment risk or its being offensive.

### ***Harassment***

The district will not tolerate conduct by any director or employee who harasses, disrupts, or interferes with another's work performance or which creates an intimidating, offensive, or hostile environment. The \_\_\_\_\_ Soil and Water Conservation District wants to maintain a working environment free from all forms of harassment, whether based upon race, color, religion, ancestry, national origin, age, marital or veteran status, physical or mental disabilities, on-the-job injuries, sex, or any other legally protected characteristic or status.

Behavior such as telling ethnic jokes, making religious slurs, using offensive "slang" or other derogatory terms denoting a person's race, age, national origin, disability, or mimicking one's speech, accent or disability, are examples of prohibited conduct and will not be tolerated in our organization. Retaliating or harassing individuals by making derogatory comments regarding protected statuses or characteristics and any other words or conduct that might create a hostile or offensive working atmosphere are also prohibited.

While all forms of harassment are prohibited, it is policy to emphasize that sexual harassment is specifically prohibited. Each manager/supervisor has a responsibility to maintain the workplace free of any form of sexual harassment. No director or manager/supervisor shall threaten or insinuate, either explicitly or implicitly, that an employee's refusal to submit to sexual advances will adversely affect the employee's employment, evaluation, wages, advancement, assigned duties, shifts, or any other condition of employment or career development. Sexual harassing conduct in the workplace, whether committed by managers/supervisors, non-managerial employees or outside individuals (vendors, customers, etc.) is also prohibited.

This policy covers conduct in the workplace, at social functions sponsored by the organization (such as holiday dinners, picnics, sporting events, etc.), and business functions (such as conventions, trade shows, etc.).

Any messages or communications sent or received through district electronic communications systems are subject to the same anti-harassment, anti-discrimination, and non-solicitation policies. The use of information systems (including e-mail, Intranet, or the Internet) for the display or transmission of sexually explicit images, messages, off-color jokes, or anything that may be construed as harassment or showing disrespect for others, is prohibited.

### ***Sample Policy Language***

The \_\_\_\_\_ Soil and Water Conservation District provides and supports a dispute resolution procedure for receiving and resolving complaints alleging discriminatory practices in employment relations.

Employees of the district have the responsibility to immediately report any actions or words by a supervisor, co-worker, vendor, or other individual, that they believe to be unwelcome harassment. Incidents should be reported to the employee's manager/supervisor, or any other manager, or to the next level of management, if the complaint involves their direct supervisor or manager.

The district will not retaliate against anyone for filing a complaint or cooperating in an investigation and will not tolerate or permit retaliation by management, employees, co-workers or non-employees such as clients, vendors and contractors.

All complaints of harassment will be investigated promptly and in an impartial manner. Discretion will be used during the investigation in order to maintain as much confidentiality as is possible while still being able to effectively complete the investigation. If an employee is not satisfied with the handling of a complaint or the action taken by the Director, then you should bring the complaint to the board of directors. In all cases, you will be advised of the findings and conclusion.

Any employee found, after appropriate investigation, to have engaged in harassment of another employee or to have retaliated against an employee for reporting harassment, will be subject to appropriate corrective action, depending on the circumstances, up to and including termination. Directors may be subject to appropriate civil action.

### **Recommendation**

Make employees aware that the federal Equal Employment Opportunity Commission investigates and prosecutes complaints of prohibited harassment in employment. If an employee thinks they have been harassed or that they have been retaliated against for resisting or complaining, let them know they may file a complaint with the appropriate agency. The nearest office is listed in the telephone book. [See Exhibit 11.1 for a sample policy on Harassment and Sexual Harassment].

### ***Dispute Resolution Process – Sample Policy Language***

All employees in the organization have the responsibility to follow and carry out the equal opportunity policy, according to the spirit and intent of (the District's) equal employment commitment. Management provides and supports a dispute resolution procedure for receiving and resolving complaints alleging discriminatory practices in employment relations. Employees are expected to bring any questions, issues, or complaints to the attention of management. If an

employee believes they have been harassed, or if they witness or suspect any violation of this policy, they should report the matter immediately to any member of management or to the board of directors. The district will not retaliate against an employee for filing a complaint or cooperating in an investigation and will not tolerate or permit retaliation by management, employees, or co-workers.

It is the district's policy to resolve all other less serious problems and misunderstandings on an informal basis and at the lowest level possible. The dispute resolution procedure is a method for impartial hearing of the complaint. It is intended to resolve the problem, and to provide employees with a fair and objective review of any concern. **All issues will be handled without prejudice or retaliation.**

### ***Reporting Incidents of Harassment or Discrimination***

If an employee believes that they have been harassed, witness, or suspect any violation of the organization's anti-harassment or discrimination policies, they must immediately report the matter to their manager, any other manager, or any senior management official. The District Chairperson is responsible for ensuring that all complaints are promptly and thoroughly investigated without prejudice or retaliation. In all cases, the employee will be notified of the outcome of the investigation as soon as it is completed and a decision has been made.

### ***Reporting all Other Issues***

Any other question or concern an employee may have is to be discussed with their immediate manager/supervisor as soon as they are aware there is a problem or have a question. Their manager will provide a written response to any concern.

### ***Appeal Process***

Honest differences of opinion occur, and there may be times when a situation will need the review or decision of a higher level of management. However, a higher management-level review is intended to occur only after the problem has been discussed with the immediate supervisor and a satisfactory solution has not been reached.

In the event an employee feels that they have been unfairly treated or unjustly disciplined by their manager/supervisor, the employee has the right to present the matter to their manager's supervisor (or other designate) for review. That official will review all aspects of the issue and make a decision. If the employee is not satisfied with the decision of the day-to-day coordinator, they may present the matter to the District Chairperson for review and settlement. The decision of this individual, working with the board, will be final.

This in no way limits any employee's recourse to any civil or legal process. All cases will be reviewed on an individual basis and without regard to precedent value.

## ***Exhibit 11.1 – Harassment and Sexual Harassment***

**Harassment** in any form is an unacceptable behavior and will not be tolerated. In general, harassment is any conduct that has the purpose or effect of unreasonable interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. Harassment is defined to include: participating in coercive or repeated, unsolicited and unwelcome verbal comments or gestures; or using implicit or explicit coercive behavior in the process of conducting business, or to control, influence or affect the career, salary or job of an employee.

**Sexual harassment** is a specific type of discrimination based on sex, and is prohibited by Section 703 of Title VII of the Civil Rights Act of 1964, as amended. Any unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment, like other forms of harassment, includes: coercive or repeated, unsolicited and unwelcome verbal comments, gestures, or physical contacts of a sexual nature; or using implicit or explicit coercive sexual behavior in the process of conducting business, or to control, influence or affect the career, salary, or job of an employee. It can also include: verbal abuse, insults, whistles, or suggestive comments; jokes; notes or pictures; touching and physical aggressiveness; pressure for dates; or threats or sexual assault.

The rules and guidelines concerning sexual harassment are not confined just to the office, but also apply to business away from the regular work place, and off the clock, work related social activities.

### **Harassment Policy**

Directors, employees, and others affiliated with the District must maintain a high standard of conduct at all times. Any individual engaging in harassing behavior or activities is subject to disciplinary action, which may include removal from office or employment.

Day-to-day coordinators who tolerate such behavior, who fail to take appropriate action on reports of harassment, or who retaliate against individuals who report incidents or file complaints of harassment are also subject to disciplinary action

for failure to perform their supervisory or managerial duties. This policy also applies in their working relationships with non-district employees, contractors, and cooperators.

### **Complaint Procedures**

If you believe that you are being, or have been, subjected to harassing or discriminatory behavior it should be reported to the day-to-day coordinator within 45 days of the incident. If the day-to-day coordinator cannot satisfactorily resolve a complaint, it should be brought to the attention of the District Chairperson (within an additional 30 days) who, working with the District board, will attempt a resolution.

Throughout any harassment resolution process, the confidentiality of the complainant(s) and witness(es) will be protected, except when breach of confidentiality is absolutely necessary to the investigation. Every attempt will be made to satisfactorily resolve matters internally at the initial stage of a complaint. However, other alternatives are available to you if you are not satisfied with a board proposed resolution. An individual may file a formal complaint through the appropriate state human rights commission within 180 days of an incident, or with the United States Equal Employment Opportunity Commission within 300 days of an incident.

### **Sanctions and Disciplines**

Any day-to-day coordinator, or employee, who violates this policy either by engaging in such previously defined inappropriate conduct, or by allowing such conduct to go unaddressed, will be subject to disciplinary actions. Such actions include, but are not limited to, counseling, reprimands, and suspensions without pay and/or removal from office or termination of employment.

Contact:

United States Equal Employment Opportunity Commission  
1801 L Street, N.W.  
Washington, DC 20507  
1-800-669-4000  
202-663-4900  
TTY: 202-663-4494

## Chapter 12 – Performance Evaluation

As the Employer of Record, it is very important to provide input to each district employee on how well he or she is meeting the work expectations of the district. Although considerable communication and feedback may occur on a regular basis, it is helpful to a district employee to have an overall evaluation of his/her performance and for a clarification of expectations. The employee's supervisor should provide an opportunity for a performance appraisal once or twice a year to:

- share with the employee the board's perception of performance, and
- receive input from the employee on how well the board is providing direction for the employee.

If there are weaknesses in the communication process, in either direction, the performance evaluation interview is a good time to identify them. Employee performance evaluations should be in writing as well as done orally.

There should be a time when a supervisor and the employee get together to review performance. Although evaluation of an employee's performance is a continuing process, a formal discussion with the employee should take place at least once a year. The evaluation should be a culmination of numerous informal observations, checks, and discussions made throughout the year. The following benefits may be realized from a formal performance evaluation system.

- Individual performance will improve.
- Supervisor-employee relationships will improve.
- Employee accomplishments and good work will be recognized.
- Personnel actions, such as pay increases, promotions, removals, and re-hires, will be based on sound, objective criteria and will be documented.
- Employees and supervisors will be more aware of job requirements and needed changes in job duties.
- Employees will be more aware of their supervisor's judgment of their performance.
- Training needs will be identified.

A formal discussion with the employee should take place just prior to, and be the basis for, decisions made regarding merit salary increases. A formal review of an employee's performance should also take place at the end of any introductory period of employment.

The success of a district depends on the success of its employees – those who actually accomplish the district goals and objectives. To ensure employees are acting in the district's best interest, it is necessary to develop a method to measure employee contributions to the district. Performance management is a

process to maximize the district's performance through its employees, by informing them about what is important and what is expected.

Performance evaluation is the tool to discuss an individual employee's contribution to the success of the district. However, performance management goes beyond assessment of past behavior, and includes rewards for desired behaviors [usually known as pay for performance increases], corrective action for unwanted behaviors, and goal setting for future behaviors.

The primary goal is to create a performance partnership between an employee and his/her supervisor. This partnership allows the employee to know, understand, and, in many cases, help develop the expected performance standards and get the necessary experiences, skills, or training to meet these standards in an efficient and cost-effective manner.

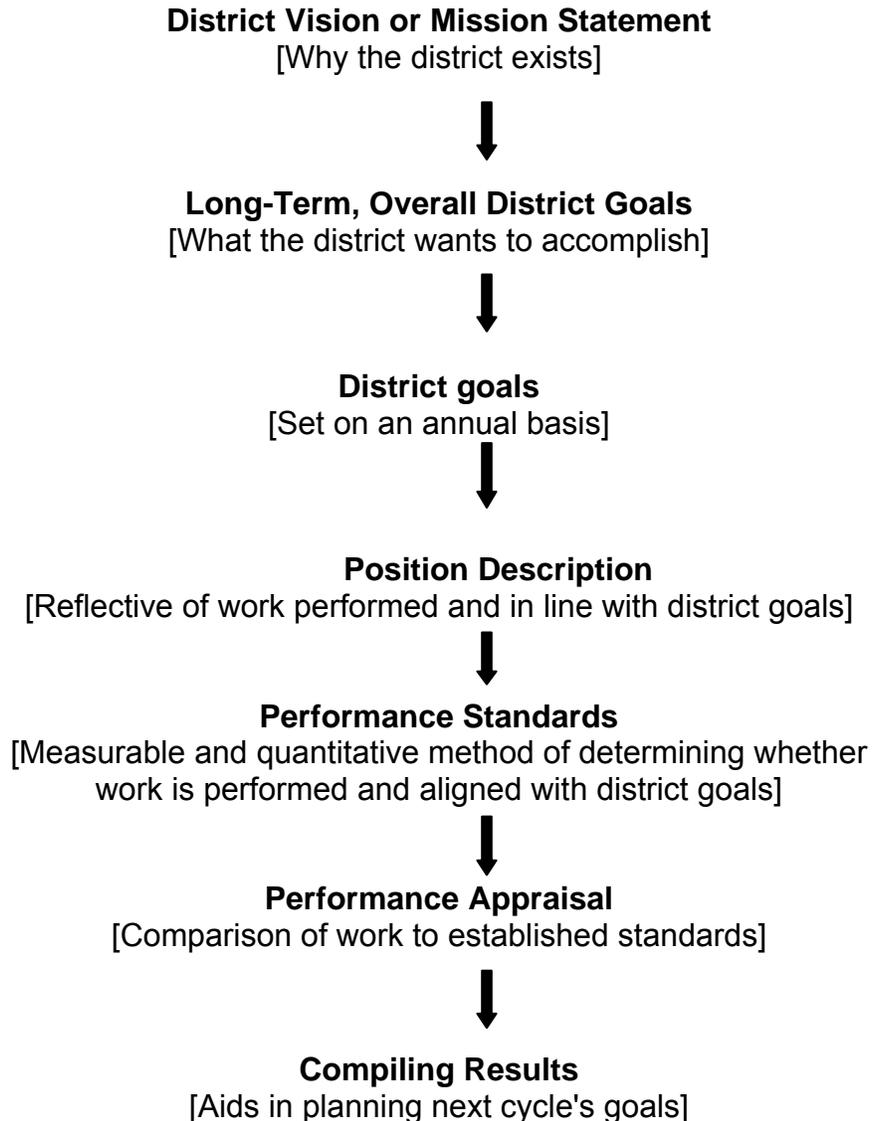
### ***Purpose and Benefits of Performance Management***

A well-designed performance management system does three things:

1. Identifies and communicates the district's goals or strategies;
2. Establishes performance targets for the district and each position/employee; and
3. Structures workplace activities, resources, and priorities to meet those targets so the value of each employee's contribution is recognized and district goals are met.

To be most effective, performance evaluation cannot be a stand-alone management process. It must be part of an overall performance management system for a district.

The system should look something like this:



### ***Performance Management as an Ongoing Process***

The first stage of the cycle is performance and development planning, which includes setting goals and objectives for the upcoming review period and appropriate timelines for each objective.

Performance needs to be managed on a continual basis, not only at pre-arranged or pre-scheduled times. This coaching can occur when an employee has a problem and asks his/her supervisor a question. A progress review can occur anytime a supervisor checks with an employee on the accomplishment of objectives. At this stage of the cycle, adjustments to agreed-upon objectives or time lines may be necessary depending on the circumstances.

The next stage is the scheduled performance evaluation. This includes a review of accomplished goals and objectives during that performance period, as well as a review of any developmental activities during that time. This meeting should also focus on creating goals, objectives, and development activities for the next review period. Thus the cycle repeats itself.

A performance management system is based on four principles:

1. Both the supervisor and the employee will set and agree upon goals.
2. Metrics for measuring the employee's success in meeting those goals will be clearly articulated.
3. The goals themselves will be flexible enough to reflect the changing conditions in the economy and the workplace.
4. Employees will be able to think of their supervisors as coaches whose role is not to pass judgment, but to help them succeed.

### ***The Importance of Objectivity***

In the past, many performance evaluation systems contained such items to be appraised as initiative, leadership, loyalty, and dependability. Although we all want loyal and dependable people who are leaders and show initiative, there is an inherent difficulty in including these characteristics in an evaluation system; it is difficult to be objective.

This is not to say leadership, loyalty, initiative, and other personal traits are not important and should not be considered. However, subjective measurements that tell what a person is or knows should not take the place of objective measurements of what a person *does*.

### ***Steps in the Formal Evaluation***

**Prepare for the discussion.** Effective evaluations don't just happen - they are planned. Gather facts, review the job description and performance standards, and decide what you want to accomplish.

**Pick a good time and place.** Arrange to hold the discussion where it will not be interrupted. Allow ample time for the discussion. Pick a time when both you and the employee can be relaxed.

**Open the discussion in a friendly and permissive manner.** Tailor the approach to each individual. Let the discussion develop naturally.

**Explain the purpose of the talk.** Explain this is a two way discussion and consists of exploring what has been done, sharing perceptions, and devising a plan for the future.

**Ask the employee to review their responsibilities.** It is not unusual that clarity is lacking concerning some aspects of the job. Ask the employee to give a general review of their major assignments. Ask which assignment they consider the most important, which efforts have produced successes, and where problems have appeared. Encourage the employee to talk and don't interrupt unnecessarily.

**Discuss each job duty.** Review the performance of each job duty with the employee and let them know how well they performed each duty.

**Jointly develop the next year's performance standards.** This gets the employee involved and promotes mutual understanding. Make any needed adjustments in duties and responsibilities.

**Jointly develop plans for improvement.** Discuss with the employee ways in which performance can be improved. Discuss areas where additional training is needed.

### ***Guidelines for Evaluating Employee Job Performance***

**Don't rely on gimmicks.** Even the best performance evaluation form won't relieve the supervisor of the responsibility to make decisions about an employee's competence. The best way to judge competence is to work with the employee day by day, to make observations about a variety of assignments.

**Admonish when necessary.** Tell an employee when they have done well and when they have not. Correction is best handled in a natural manner. However, it is hard for both supervisor and the employee if this is lumped all together in a single, grueling session held once or twice a year.

**Be self critical.** Before an employee is admonished for inadequate work, ask yourself frankly, "Has leadership contributed to this deficiency in any way?" "Was too much expected?" "Did the employee understand the duty?" "Did the employee have proper training to do the job?" "Is the criticism absolutely fair, or is it influenced by bias?" Objectivity enables discussion of the employee's poor performance to be constructive. Willingness of the supervisor to accept accountability for mistakes will make the employee more willing to shoulder responsibility.

**Make sure the employee has the same understanding of the job that the supervisor has.** An employee's job performance cannot be judged fairly if they have not fully understood the duties of the position. Let the employee talk. It may be found that the employee was unaware of responsibility for certain job duties for which the supervisor claimed neglect.

**Get down to cases.** Vague generalities don't work. Be specific. Explain in precise language where the employee is falling short, and what can be done to correct mistakes. Make sure the employee understands precisely what standards s(he) is expected to meet.

**Criticize the work, not the person.** Avoid being personal when discussing an employee's job performance. There are certain exceptions to this advice; e.g., if the attitude, mood, or other personal behaviors of the employee are affecting their job competence or others' work.

**Don't laugh it off.** Some supervisors try to hide criticism behind humor. This is a mistake. If confrontation is necessary to improve performance and competence, then the seriousness must be conveyed as well. An employee's competence at the job is very serious both to the employee and to the supervisor. Supervisors who confront with constructive criticism will often earn the respect of their employees.

**Comment on improvements.** If an employee corrects a shortcoming that has been criticized, comment on the improvement. This will encourage the employee to continue in excellence and improve the response to future corrections.

**Don't be a debater.** The supervisor is the final judge of an employee's job performance. This doesn't mean to cut off all discussion. Let the employee state a point of view, and if correct, say so. Don't permit the discussion to turn into an argument.

**Don't compare.** Comparisons are odious. This is especially true in discussing job performance. An employee may be willing to accept criticism of deficiencies, but they may be resentful if another individual is pointed out as an example to be followed.

**Emphasize strong points.** The skillful leader plays up the strength of subordinates. It's better for a worker to develop special talents and skills than to spend the entire time trying to correct weaknesses. Point out an employee's deficiencies and help try to minimize them, but keep things in balance. If concentration is entirely on the negative, little will be accomplished in developing the positive. A checklist for performance evaluation is included in this chapter as Exhibit 12.7.

### ***Analyzing Poor Performance***

Many districts have had to face the problem of an employee performing at an unacceptable level. Such a situation is the true test of a good supervisor because the way in which the problem is handled may very well affect the life of the employee. The causes of poor performance are too numerous to detail, but they can be grouped into three categories: the employee, the supervisor, or the situation. Determining the exact cause of poor performance and taking

appropriate action are very important in maintaining the efficiency of district operations.

The following is a very general discussion of the causes of poor performance.

**The employee.** Outside forces, such as financial pressures and family or health problems can be responsible for poor performance. The cause should be determined and professional help sought if necessary. Perhaps the employee is careless or negligent. Perhaps the job itself is beyond the current capabilities of the employee. In such a case, additional training may be the answer.

**The supervisor.** Has the supervisor upheld their responsibility to the employee? Did the supervisor adequately determine training needs? Has the supervisor maintained a periodic check of the employee's performance and suggested improvements? Have the requirements of the position been adequately explained to the employee?

**The situation.** Do conditions exist on the job that preclude acceptable performance or are beyond the control of the employee? Were standards set too high? Does the job hold a challenge for the employee? Regardless of the cause for poor performance, the reason should be determined and appropriate action taken.

### ***Problems or Barriers to Performance Management***

There are a number of reasons why performance management systems don't work. Fundamentally, the best designed system will never be effective if the emphasis is on completing annual forms, rather than focusing on the year-round process of goal setting, coaching, course-correction, and employee development. Other reasons include:

- Evaluators do a poor evaluation for the following reasons:
  - ✓ Desire to give a bigger increase;
  - ✓ No performance standards are in place;
  - ✓ Don't want to admit hiring the wrong person;
  - ✓ Don't want to admit failure to train an employee;
  - ✓ Personal bias or other rating errors;
  - ✓ Lack of knowledge regarding the job being evaluated;
  - ✓ A desire to avoid negative issues; and/or,
  - ✓ A failure to look at the entire performance period.
- Employees see the system or process as unfair.
- Performance expectations are poorly communicated.
- Review comments are too general.
- Ratings are inconsistent with compensation.
- Negative issues are avoided or delivered in a harsh, abrupt manner.

- Only recent performance is considered when doing the review.

Most of these problems can be corrected by involving employees in creating the system, effectively communicating the system and its processes to everyone in the district, and training supervisors and managers in using the system correctly, consistently, and appropriately.

### ***Purpose and Benefits of Performance Evaluation***

The general goal of performance evaluation is to help employees accomplish results that will meet district objectives. A good performance evaluation system should:

- Provide a systematic analysis of all important aspects of an employee's performance;
- Provide a prospective and retrospective view;
- Consistently apply uniform standards to all employees;
- Reduce guesswork, favoritism, and other illegal or unwanted influences in the evaluation process;
- Produce a fair, reliable, and objective basis for promotions, transfers, training, terminations, merit increases, etc.;
- Give employees recognition and rewards in direct relation to their performance on the job; and,
- Provide information on progress and development to each employee with specific indications of where improvement is needed and how the employee's contribution is viewed.

A well-designed performance appraisal system will have other benefits in addition to ensuring employees are performing in a manner that supports district plans and needs. These benefits may include:

- Improved productivity as employees learn how their work behaviors directly affect the district's productivity and success.
- Improved employee relations as employees see consistency in the evaluation process and that performance problems are not allowed to continue.
- Development of an inventory of workforce skills that maximize use of employees' abilities.
- Motivated employees correct their own performance problems as they are made aware, in a timely and positive manner, of how and where improvements can be made.
- Development of employees for the district's future needs.

- Disclosure of weaknesses in the recruitment and selection process.
- Creation of a sound and visible connection between the rewards for excellent performance and the district goals and objectives.
- Increased supervisory involvement in personnel management issues such as training and promotions.

Before developing a performance appraisal process, a district needs to understand its current formal or informal evaluation methods and its employees' opinions about what should be happening. The following questions can be used to discover what is currently happening, and what should be happening.

1. What are your district's performance evaluation system priorities: Improving performance? Identifying promotion potential? Developing employees? Identifying training needs? Receiving employee feedback? Compensation, staffing, or something else?
2. Who is responsible for administering the performance evaluation system: the directors, managers, or supervisors?
3. Does the employee always, sometimes, or never see the completed evaluation form? Employees should always review the completed evaluation form. If it's not shared, employees may become suspicious and distrustful of the system.
4. What does your district consider to be the most important factor measured in the evaluation process: Potential? Results? Knowledge? Job skills? Job behaviors? Other?
5. Does the district's evaluation form evaluate personality traits? Personality trait evaluation is far less preferable to actual behavior and results-oriented reviews. And, from a legal standpoint, it is difficult to defend personality-based evaluations of employees.
6. Who has access to completed evaluation forms? Access should only be on a need-to-know basis. We recommend completed appraisal forms be kept in each employee's personnel file and access be restricted to the employee, directors, and supervisors.
7. Who receives copies of completed evaluations? The employee should be given a copy of the completed form; the original should go to the personnel file; and there may be instances where it would be appropriate for the supervisor to keep a copy.
8. What are evaluations used for in the district: Training decisions? Lay-off decisions? Discharge? Disciplinary actions? Promotions? Other?

9. Are evaluation interviews with employees required or optional? They should be required. Evaluating performance is an important activity.
10. Does the evaluation system lead to intended changes in behavior?
11. Does the evaluation system lead to intended changes in performance?
12. Have specific performance standards been developed and communicated so that employees understand the criteria against which their performance is being measured? This is an extremely important part of the process.
13. What training methods are used to orient supervisors and managers regarding goals and procedures of performance evaluation: Policy manuals? Direct supervision? Formal training session? No training? Failure to provide training may lead to inconsistency and the possibility of employment-related legal claims, such as discrimination or wrongful discharge.
14. How frequently are evaluations done? Typical timeframes include the end of the introductory period, annually, or semi-annually, but this is really up to each district. We recommend that evaluations be conducted at least annually.

### ***Performance Evaluation Criteria***

Three types of criteria are commonly used to evaluate employees: traits, results, and behaviors.

#### **Traits**

Using traits, although easy, is often ineffective because of the generality and lack of objectivity. Another issue to consider is that traits-based appraisal systems are not legally defensible in the court system as the basis for making employment decisions. Traits are susceptible to partiality and to the personal taste, whim, or fancy of the evaluator.

#### **Results**

Results are much more objective than traits. However they alone don't provide information on how a job or a certain set of job functions should be performed. Despite this disadvantage, results-oriented evaluation systems can be especially effective when employees have input into establishing the criteria for determining results, are counseled or trained in specific ways to accomplish the desired results, and can control the results.

#### **Behavior**

The third criterion often used for performance evaluation systems is specific behavioral measures. The main drawbacks are they are time-consuming to develop, must be developed uniquely for each job, and must be modified if a job

changes at all. The advantage of using behavioral criteria is they provide mutually agreed-upon written instructions to employees regarding the district's expectations.

Some general evaluation criteria may include:

- Communication skills.
- Accuracy/quality of work performed.
- Learning capability.
- Attendance.
- Initiative.
- Quantity of work performed.
- Job knowledge.
- Service orientation.
- Cooperation/teamwork.
- Managing change and innovation.
- Planning/organizational skills.

In addition, supervisors should be evaluated on:

- Supervisory skills.
- Success in motivating and developing employees.

Any criteria chosen for evaluation need to reflect the district's goals and objectives.

## **Setting Performance Standards**

Performance standards work best when employees know what is expected of them. Likewise, districts work best when their employees understand the district's goals/standards. Finally, people are most likely to reach goals/standards they have helped set.

Performance (or job) standards may be defined as task or behavioral standards established as goals to be achieved by an employee. Performance standards provide the basis for performance evaluation and measure work that should be attainable if all else is normal. Because performance standards are the specifics upon which each individual's performance is based, standards must be developed for each position individually.

To be effective, a standard must have four characteristics. It must be:

1. Specific.
2. Quantitative, qualitative, and timely. There must be "measures" that can demonstrate whether the work was accomplished.
3. Attainable.
4. Relevant – directed toward work important to the district.

A good standard must stimulate interest and challenge the employee. Standards that are too easily achieved may result in boredom and cause employees to lose interest. A standard should also direct the employee's focus to the desired end results. This keeps the activity in proper perspective – the activity is designed to produce an output or end result.

If a desired outcome or activity can be articulated, it can be measured.

### ***Performance Evaluation Forms***

In order to conduct effective and consistent performance evaluations, we recommend using standardized forms. In addition to the employee's name, job title, and date of evaluation, it should include signature blocks for the supervisor and the employee. The employee should be asked to sign that the evaluation has occurred, not that there is necessarily agreement with the evaluation itself. A rating scale for measuring performance is also needed. Well-defined rating scales may be wordy, but they are easier to follow. In addition to established criteria, the evaluation form needs to include space for explanation of the chosen rating. It is not sufficient to rate criteria without comments. Examples reinforce the concept that the appraisal is an evaluation of the employee's work behaviors and not an attack on the person's character.

### ***Employee Participation in the Evaluation Process***

An effective performance evaluation process includes employee participation – from developing the process, to receiving a copy of the completed evaluation, to setting goals for the next performance period. Any process created or administered without employee input may result in employee resistance, refusal to cooperate, or even attempts to sabotage the process.

To encourage employee participation in the performance appraisal process, the district may want to use an employee self-evaluation form (see the Forms Appendix for a sample).

In addition to self evaluation, here are some other suggestions for ways to increase employee ownership in the process:

1. Let the employee schedule the evaluation appointment.
2. Give the employee specific questions to think about prior to the appointment.
3. Explain the purpose of the discussion.
4. Let the employee talk first.
5. Have the employee take notes or work with a blank form.
6. Let the employee draft the final form or text of the discussion and next year's plan.

### ***Evaluations for Managers***

As part of an effective, worthwhile performance evaluation process, managers should be “receivers” as well as “doers.” In other words, managers’ performance should be evaluated, just as the performance of their employees. The evaluation process for managers, however, must encompass the distinctive nature of the work that managers and supervisors do. A sample form for that purpose is included in the Forms Appendix.

### ***Preparing for the Performance Evaluation***

It is important to keep track of performance throughout the cycle by taking notes during regular meetings and coaching sessions. After setting the date and time, begin preparing several weeks in advance by gathering the following information:

- District goals
- Performance standards
- Previous evaluation goals (and performance toward those goals)
- Evaluation form
- Work specifics and examples collected during the evaluation cycle
- Position description and job standards
- Coaching and planning session notes
- Attendance records
- Input from others
- Employee self evaluation

## ***Structure of the Discussion***

Following is a sample outline for ensuring that certain topics are covered in an evaluation discussion:

### **Opening**

The opening should remind both parties why they are having this discussion and what they hope to accomplish. It is also a good time to elaborate on meanings so that any misperceptions can be clarified before the discussion gets underway.

### **Employee Comments**

Assuming that the employee is an active participant in this process, allow him/her to speak first and discuss their perceptions of how objectives have been met.

### **Supervisor Comments**

The supervisor can then relate his/her perceptions of how the employee has met objectives.

### **Planning/Goal Setting**

Planning includes both professional and personal goals. Professional goals deal with performance issues and future development needs. Personal goals deal with a person's interests at work, and their desire to stay with the employer.

### **Closing**

In closing, review the discussion, recognize the employee's accomplishments, and set plans to follow-up on next year's goals and objectives or other matters that were discussed.

## ***Tone of the Discussion***

Both the tone and format of the evaluation discussion can affect how the employee receives it and the comfort level of the person giving the evaluation. Evaluators should remember the employee probably has some concerns about the evaluation process. The discussion should be without interruptions. Seating should be arranged to emphasize and enhance participation.

General principles to follow are:

- The discussion dialogue should be an open exchange of comments and ideas that allows room for differences of opinion.
- The conversation should focus on a discussion of results and behaviors, NOT personal characteristics. Discussing personal characteristics can be viewed by the employee as an attack rather than an appraisal.
- As much as possible and where appropriate, offer reassurance and compliments.
- If an employee disagrees with the evaluation, gentle probing of the issue may reveal the reason and uncover areas where the employee's perception is different than first thought.

- If and when possible, seek a way to agree on a subject or comment.
- Most importantly, the evaluation process can't be rushed. The employee needs time to relax and say what is on their mind.
- In concluding the discussion, set a follow-up meeting to talk about progress on next year's goals and objectives.

### ***Discussion Techniques***

The types of questions an evaluator asks can determine how much information an employee will share.

- A question calling for a "yes" or "no" answer or a specific piece of information is the least useful in encouraging people to open up.
- An open-ended question can be more effective because it encourages the employee to reveal as much as possible about a particular area, rather than soliciting an "expected answer."
- One variation on the open-ended question is the open-ended problem. This involves posing a hypothetical situation and asking the employee how s/he would handle it.
- Give directives such as, "Tell me about it," or "Give me some details," to keep the employee talking and on track.
- If an employee has a difficult time grasping a situation, making suggestions and requiring a choice from more than one alternative can guide them to more effectively express their feelings or beliefs.
- If at any time emotions are too intense for calm and rational dialogue, it is best to suspend the meeting and suggest another time to continue.

### ***Self Evaluations***

The value of self evaluation is considerable.

1. It is an important way to get an employee to "buy-in" to the evaluation process. It is much easier for employees to accept a process over which they have some control.
2. From an employee relations perspective, self-evaluation is not done *to* an employee. Instead, it makes the employee an active participant in the process.
3. Comparing the employee's self evaluation to the supervisor's evaluation can reveal areas where communication may have been unclear or misperceived. This allows both parties to correct the lack of clarity or misperception.

### ***Supervisor Appraisals***

Supervisor evaluations are relatively new and still viewed with suspicion by supervisors and employees alike. However, many districts find the information gathered from employees very helpful in determining manager training programs. To work effectively, employees must be convinced the district truly desires their honesty and will use the information provided. Employees usually have to be convinced they will not be retaliated against for their remarks. Supervisors often

have to be convinced that employees will give a fair and just evaluation and will not be "out to get" them.

## ***Training***

Over time, some of the more frequent problems with performance evaluation processes have been documented and analyzed. A common observation is that, without education and training, individuals tend to repeat certain errors in judgment when evaluating the performance of others. Repeated errors in judgment contradict the purpose of the performance management system, sometimes rewarding poor employees while discouraging good employees, even to the extent of hindering their retention. Another compelling reason to identify and prevent judgment errors in performance evaluations is to avert claims of unlawful discharge or illegal discrimination.

## **Common Errors**

You can help to minimize repeated errors in judgment by teaching evaluators how to recognize them. Following is a description of the most common errors of this type and suggested ways to avoid making them.

### **Contrast Effects**

May occur when one supervisor evaluates several individuals. One employee is compared to another, rather than to defined criteria. Thus, if one person is a strong performer, the next-evaluated individual may appear weak, when actually s/he may be effective but not to the same extent as the previous employee. Well-written specific performance standards help prevent this error.

### **First Impression**

Occurs when an evaluator initially decides an employee is very good, very bad, or just mediocre, and later distorts new information about that employee's performance to avoid changing their opinion. Considering a variety of concrete examples over the entire review period will help to eliminate this error.

### **Halo Effect**

Involves giving a favorable rating on all duties based on impressive performance in just one category. A well-written performance evaluation form that covers the entire scope of an employee's position will help to reduce this error.

### **Pitchfork Effect**

This occurs when all categories are rated poorly because of weakness in one or two areas.

### **Similar-to-Me Effect**

The tendency to judge more favorably those whom one perceives to be similar to him/herself. This can include having similar beliefs, points of view, or backgrounds.

### **Central Tendency**

The tendency to “play it safe” and give everyone a middle score.

### **Leniency/Strictness**

The tendency to assign lenient, or loose, ratings, often to avoid confrontation by ignoring weak areas. This can leave employees unaware that there is a need for improvement, or they may be promoted before they are ready for additional responsibility. Like the central tendency error, this may cause employees to doubt the validity of the performance management culture. This is an area where application of performance standards can reduce errors.

### **Error of Recency**

Only the last few weeks of the evaluation period are included in the rating. Accomplishments throughout the period should be noted, as well as any critical incidents occurring during the same period.

### **Rater Bias**

Caused by the conscious or unconscious biases held by the evaluator. For example, “Men are more logical than women.” “Overweight people are not as physically active as thin people.” As an evaluator, it is important to consider whether such biases exist.

## ***Legal Implications of Performance Evaluations***

An employee's performance appraisal is an important part of the documented history of the relationship between the employee and the employer. As such, it needs to be an honest and accurate reflection of that relationship. Performance appraisals play an important role in lawsuits involving charges of unlawful discharge and illegal discrimination.

### **Unlawful Discharge**

Material in the personnel file must support and justify the firing of an employee for poor performance or when performance is, in any way, an issue in the firing. If the terminated employee sues for unlawful discharge and the performance evaluations only describe the employee's performance in good or satisfactory terms, it will be difficult for the district to successfully defend against the charge.

Performance management is a continuous process; when an employee is not performing to standards, it is essential to document all of the district's efforts to improve the employee's performance, as well as the results.

### **Illegal Discrimination**

Federal, state, and municipal laws make it illegal to make employment decisions based on characteristics such as age, sex, race, color, religion, marital status, veteran's status, or sexual orientation. If a current or former employee claims

that such an event occurred, performance evaluation documents will play an important role in successfully defending that claim. The courts look for employment decisions based on valid, objective, job-related criteria. Well-written performance evaluations based on well-defined, well-communicated, and legitimate performance standards play an important role in the successful defense against such charges. Conversely, poorly written performance evaluations based on subjective criteria irrelevant to the position will cast doubt on any assertions made by management that the employment decision in question was not an act of illegal discrimination.

### ***Performance Management and Hiring***

When a district hires an employee, the person doing the hiring is looking for a combination of education and experience, and plans to have the new hire use that education and experience to perform certain tasks or activities for the district. Information gathered in the performance evaluation can provide important feedback as to whether that is occurring. If the information gathered reveals deficiencies or weaknesses, the required education and experience for a particular position can be modified or training for new hires can be developed. Thus, the information gathered from the performance management process is used to improve hiring and the performance management culture is reinforced.

### ***Career Management***

An integral part of the performance partnership is ensuring employees have chances to develop or acquire the necessary skills, training, and experience to meet future performance goals. From the employee's perspective, it can be very helpful to be aware of skills that are lacking or know that management is looking for employees to develop certain other skills to meet future needs. .

### ***Employee Development***

As part of the goal setting process of performance appraisal, management should plan for future needs, encourage employees to set goals that will meet those needs, and ensure these employees are provided the training and experience to acquire any necessary skills.

Employee development is not just for line or staff employees. It has important implications for supervisory and management employees as well. If a district is not producing promotable employees at all levels, the performance management system needs to be scrutinized thoroughly for possible reasons.

## Exhibit 12.1 – Performance Evaluation Form

### PERFORMANCE EVALUATION FORM

#### Statement of Policy

[District] believes in regularly scheduled performance evaluations of employees. The evaluation will be a formal written document to assist the employee in his/her development and to provide the basis for compensation, promotion, transfer, and retention. This process assumes, and designates as a supervisory responsibility, that mutually agreed upon standards for performance will be set and used to evaluate employees. The overall evaluation will be conducted on a job-related basis, and will consider both supervisory observation and co-worker opinion.

It is the district's responsibility to monitor employees' efforts continuously through communication and counseling, and the written appraisal must be consistent with such prior discussions.

The district will maintain appropriate records of employee accomplishments and behavior to assure that the information incorporated into the appraisal is accurate, representative, and relevant to the entire evaluation period.

An employee's performance is confidential and guarded from inappropriate disclosure. Completed evaluation forms and their content should not be discussed outside authorized management channels. Employees should refrain from discussing appraisals, compensation, promotion, retention, or similar confidential data with other employees. Each employee must receive a copy of their completed evaluation for their own records.

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

Job Title: \_\_\_\_\_

Rate the employee on the job behaviors inside this form and circle the number corresponding to the most appropriate response:

- 1 - NEEDS IMMEDIATE IMPROVEMENT - Not performing to the requirements of the job. Needs a high degree of supervision and direction. May not have background to grasp the work. Needs to be aware of performance deficiencies and work immediately to correct.
- 2 - APPROACHING STANDARDS - Usually performs at or close to job requirements, however, needs supervision for complete and on time results. Could result from being new to the position.
- 3 - CONTRIBUTORY PERFORMANCE - Performance is what is expected of a fully qualified and competent person in the position. Sometimes performs with excellence, but not consistently.
- 4 - OUTSTANDING - Far exceeds normal expectations. Seldom equaled in overall contribution to [DISTRICT] and/or its programs.

The "prompts" shown next to the numerical ratings are meant to be a guide, and should not be used as strict or explicit statements.

EVALUATORS MUST ADD COMMENTS REGARDING EACH CRITERION TO EXPLAIN OR ILLUSTRATE THE JOB BEHAVIOR.

COMMUNICATION/TEMPERAMENT - Consider level of communication skills. Also consider ability to adjust skills to multitude of personalities and circumstances.

- 1 - Exhibits poor communication skills. Needs substantial improvement to be effective. Fails to notify others of critical issues or incidents. Has difficulty maintaining emotional balance.
- 2 - Communication requires effort. Is not comfortable with some interactions. Unsure when others should be notified of events. Retains even emotional keel in most circumstances.
- 3 - Effective in expressing and understanding ideas and instructions. Communicates clearly with staff, management, vendors, and customers. Maintains good behavior balance even when situation is difficult.
- 4 - Exceptional communication skills. Relates positively with everyone. Outstanding capacity to maintain sense of humor, perspective, and is a calming influence.

Comments:

ACCURACY/QUALITY - Consider correctness and thoroughness of work results when compared to established procedures and methods.

- 1 - Makes errors in judgment and work is inconsistent with desired quality.
- 2 - Usually accurate. Makes occasional mistakes.
- 3 - Requires little checking. Is exact, precise and complete most of the time.
- 4 - Requires virtually no checking. Accuracy and quality of work are a priority.

Comments:

LEARNING CAPABILITY - Consider speed with which new routines and explanations are understood, and the ability to retain new knowledge.

- 1 - Requires repeated and detailed instructions and explanations.
- 2 - Grasps instructions after explanation and opportunity to try out.
- 3 - Learns rapidly and retains instructions. Readily agreeable to change.
- 4 - Exceptionally fast to learn and adjust to changing conditions.

Comments:

ATTENDANCE - Consider faithfulness in coming to work daily, on time, and conforming to work hours.

- 1 - Lax in attendance and/or reporting for work on time.
- 2 - Usually present and on time.
- 3 - Promptness and attendance at standard.
- 4 - Exceptionally reliable in this area.

Comments:

INITIATIVE - Consider the tendency to contribute, develop, and/or carry out new ideas or methods.

- 1 - Rarely initiates or suggests new approaches. Prefers no change.

- 2 - Shows initiative occasionally. Needs to improve.
- 3 - Is resourceful, suggests or implements change and improvements.
- 4 - Frequently suggests new methods. Is very imaginative and creative. Acts on own initiative to accomplish assignments or identify work to be done.

Comments:

QUANTITY OF WORK - Consider the volume of work an individual does during a shift as compared to the volume of the whole job.

- 1 - Unable to keep pace with expected workload.
- 2 - Meets standards of output on some occasions, but not on consistent basis.
- 3 - Meets requirements of work expected.
- 4 - Usually completes more than expected without any sacrifice of quality.

Comments:

JOB KNOWLEDGE - Consider the depth and breadth of information concerning work duties, processes and [DISTRICT] procedures which are required for competent performance.

- 1 - Lacks understanding of many aspects. Makes little effort to upgrade self.
- 2 - Lacks knowledge of some procedures and/or duties. Makes an effort to improve.
- 3 - Has necessary knowledge level and works to keep it current.
- 4 - Has broad knowledge base of own job and (DISTRICT) as a whole. Takes advantage of every opportunity to improve self.

Comments:

SERVICE ORIENTATION - Consider relationship with staff, management, vendors, and customers.

- 1 - Does not demonstrate interest in others' needs, concerns, or work.
- 2 - Occasionally places operational tasks above others' needs or concerns. Needs to value people more highly.
- 3 - Interacts well with others. Acts effectively and cooperatively to solve problems in a timely fashion. Knows value of good service and positive interactions.
- 4 - Treats others as top priority. Clearly communicates their importance. Demonstrates effort to meet all requests and needs.

Comments:

COOPERATION/TEAMWORK - Consider willingness to assist others, contribute to harmony, and work toward common goals.

- 1 - Exhibits unwillingness to work with others. Not seen as a team player, can be obstacle to accomplishing goals.
- 2 - Prefers to work independently. Not quick to share information, resources, or efforts, but will when asked.
- 3 - Understands and supports concept of teamwork and is quick to volunteer to assist others.
- 4 - Exceptional at building work teams and consensus. Always has time and energy to give to others. Creates very harmonious work environment.

Comments:

MANAGING CHANGE/INNOVATION - Consider level of understanding why change is necessary and what will be required. Also consider ability to ask for input to clear up misunderstandings and to offer ideas on how to make change go as smoothly as possible.

- 1 - Unable to innovate or foster change.
- 2 - Some understanding of the change process. Often uncomfortable with cooperatively approaching change.
- 3 - Recognizes needed change and takes responsibility for an effective change and innovation process.
- 4 - Innovative thinking. Exceptional ability to foster positive climate of change.

Comments:

PLANNING/DISTRICT - Consider level of planning, organizing information, prioritizing tasks, and utilizing resources to meet needs; level of dependability in meeting deadlines.

- 1 - Crisis work style. No planning evident. Poor utilization of resources. Misses important deadlines.
- 2 - Deals with current situation only. Needs more planning to meet deadlines and handle multiple tasks.
- 3 - Not only thinks ahead, sees needs and reacts quickly to new priorities. Good at planning for future situations. Work is completed on time.
- 4 - Thinks strategically and is able to combine resources and information with exceptional skill to deal with current and future work. Efficiency and effectiveness at the highest level.

Comments:

SUPERVISING/MOTIVATING EMPLOYEES (if applicable) - Clearly tells others or employees what is expected and how their work will affect customers. Handles emotional behavior effectively. Gives recognition for positive results. Uses coaching and delegation to encourage improvement, takes corrective action when needed.

- 1 - Little effort expended to motivate or recognize people. Appears insensitive to others' needs. Subordinates do not see supervisor as role model.
- 2 - Does not take sufficient responsibility for motivating subordinates. Needs improvement. Needs to strengthen supervisor/subordinate relationship.
- 3 - Understands and takes seriously the development of employees. Creates a good work environment.
- 4 - Creates a most positive and highly effective work environment. Exceptionally skilled at developing and motivating employees to give best effort.

Comments:

### NARRATIVE SUMMARY

Overall Rating: Put an "X" where description most closely approximates this person's total impact on [DISTRICT]. Do not average; rather, consider the overall contribution.

- |  |   |
|--|---|
| <input type="checkbox"/> Falls below standards | <input type="checkbox"/> Contributory Performance |
| <input type="checkbox"/> Approaching standards | <input type="checkbox"/> Outstanding              |

Supervisor Signature

Date

Supervisor/Manager

Date

EMPLOYEE COMMENTS (use additional paper if necessary for full detail)

Your signature does not imply you agree with any or all of the evaluation remarks, only that you have been given an opportunity to participate in the process and have seen this review.

Employee Signature

Date

PLANNING FOR FUTURE PERFORMANCE (to be completed by both employee and supervisor during the appraisal discussion)

List mutually agreed upon specific areas which represent opportunities for improvement or growth in performance. Establish and list here specific objectives for achieving this improvement or growth. Discuss the action steps to accomplish each objective. Include resources committed by the supervisor and/or [DISTRICT] to support this growth where applicable.

Targeted Areas	Objectives	Date of Achievement

What training, support, actions, or resources are necessary or desirable to complete the above performance plan or to build skills for the future?

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## Exhibit 12.2 – Employee Self-Evaluation Form

[DISTRICT] is committed to developing and helping all of its employees grow and develop their full potential. To further this effort, employees are asked to evaluate their own performance. Your responses to the questions below will aid in providing a complete and accurate performance review. If, for some reason, a question is not applicable to your position, please check "Not Rated."

\_\_\_\_\_  
Name of Employee

\_\_\_\_\_  
Date

1. I believe that I:

- a. Give advice or assistance freely when asked, respond to requests for information, questions, or suggestions in a timely manner; don't hold up the work of others unnecessarily with delays if at all possible.

Consistently       Usually       Sometimes       Rarely       Not rated

Comments:

- b. Keep others informed about the progress of my work that impacts their work, and let them know when deadlines or timelines are changed.

Often       Occasionally       Seldom       Not at all       Not rated

Comments:

- c. Work safely; follow established safety practices and procedures.

Consistently       Usually       Sometimes       Rarely       Not rated

Comments:

- d. Demonstrate initiative in how I do my work and ensure its accomplishment.

Consistently       Usually       Sometimes       Rarely       Not rated

Comments:

- e. Am receptive to ideas and suggestions for new or different systems or approaches.

Very receptive       Somewhat receptive       Not receptive       Not rated

Comments:

f. Am reliable and dependable when dealing with other staff members; do what I say I will do.

\_\_\_ Consistently      \_\_\_ Usually      \_\_\_ Sometimes      \_\_\_ Rarely      \_\_\_ Not rated

Comments:

g. Treat other employees in a manner which creates a feeling of mutual respect.

\_\_\_ Consistently      \_\_\_ Usually      \_\_\_ Sometimes      \_\_\_ Rarely      \_\_\_ Not rated

Comments:

h. Treat customers, vendors, and other outside contacts with courtesy, consideration, and helpfulness.

\_\_\_ Consistently      \_\_\_ Usually      \_\_\_ Sometimes      \_\_\_ Rarely      \_\_\_ Not rated

Comments:

2. On a scale of 1 to 4 (1=low, 4=high), rate your work quality and quantity; explain your ratings.

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3. Do you feel that you fall below, meet, or exceed your supervisor's and district's expectations, and why?

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4. What do you feel you have accomplished or improved upon since your last review (or hire date, if you have not previously had a review)?

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5. Are there any areas in which you feel you could improve? If so, what are they and what type of improvement is necessary?

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6. Overall, how well do you feel you perform your job duties and responsibilities?

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7. What do you need from your supervisor or the district to help you perform your job? Why?

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## EXHIBIT 12.3 – MANAGER/SUPERVISOR EVALUATION FORM

(Insert this page in the performance review if the individual being reviewed has supervisory and/or management responsibilities.)

BUDGET/FISCAL RESPONSIBILITY - Develops realistic budgets, manages within established parameters.

1. Does not comprehend budget responsibility.
2. Needs improvement relative to budget process and expense management.
3. Develops budget guidelines and has minimal variance.
4. Exceptional ability to forecast and manage expenditures without compromising results.

Comments/Examples:

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PLANNING/DISTRICT – Plans, organizes information, defines and prioritizes tasks, and develops resources to meet district needs.

1. Crisis management style; no planning evident
2. Deals with current situation only. Needs more long-range thinking.
3. Thinks ahead. Sees needs and reacts quickly to new priorities. Good at planning for future situations.
4. Thinks strategically and is able to combine resources and information with exceptional skill to deal with current and future issues.

Comments/Examples:

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MANAGING – Develops efficient methods of tracking district activities and effectively utilizes resources. Establishes guidelines and sets priorities to direct subordinates. Delegates proper authority and workload.

1. Poor utilization of resources, both personnel and physical.
2. Delegation and work results can improve to meet district needs.
3. Work is well distributed and completed as scheduled.
4. Results of efforts are more than expected; efficiency and effectiveness are at highest level.

Comments/Examples:

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MOTIVATING EMPLOYEES – Gives constructive feedback. Seeks information from subordinates when problems arise. Gives clear and logical reasons for decision. Handles emotional behavior effectively. Gives recognition for positive results.

1. Little effort expended to motivate or recognize people. Insensitive to others' needs. Subordinates do not see supervisor as role model
2. Does not take sufficient responsibility for motivating subordinates. Needs improvement. Needs to strengthen supervisor/subordinate relationship.
3. Understands the need to provide motivational atmosphere for employees to achieve good work, and creates good work environment.
4. Creates a most positive and highly effective work environment and encourages self and employees to give best effort.

Comments/Examples:

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DEVELOPING EMPLOYEE PERFORMANCE - Clearly tells employee what is expected and how their work will affect business goals. Allows time for, and encourages, career development and job-skills training. Recognizes

employee limitations and uses coaching and delegation to encourage improvement. Takes corrective action promptly when needed.

1. Spends no time with and makes no effort to develop subordinates.
2. Seldom spends time with individuals except to give instructions and correct problems.
3. Understands the responsibility and takes subordinate development seriously.
4. Highly skilled at focusing on individual performance and encouraging employees to do their best. Helps employees take responsibility for improving their performance.

Comments/Examples:

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MANAGING CHANGE/INNOVATION - Explains to employees why change is necessary and what will be required. Asks for employee input to clear up misunderstandings. Seeks and uses employee ideas on how to make change go as smoothly as possible. Monitors and reinforces progress.

1. Contributes to an environment where people are fearful of change.
2. Resists change and promotes an environment of status quo. Needs to recognize value of change and be less resistant.
3. Recognizes that change is part of the work process and takes responsibility for working with employees to make the changes.
4. Creates and sustains a climate that accepts change as part of the work process and stresses the importance of working smarter.

Comments/Examples:

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MAKING DISTRICT IMPACT - Maintains effective relationship with district top management. Maintains a constructive relationship and confronts issues to achieve positive results. Understands the business and generates ideas to improve overall operations.

1. Makes no effort to build positive relationships with managers and peers, seldom offers any ideas.
2. Seldom collaborates with other departments or people. Needs to get more involved with whole business.
3. Recognizes the value of peer and management support in getting the job done. Offers ideas and participates in overall district processes.
4. Takes initiative to effectively build trust and creates allies in all parts of the district. Is highly interested and committed to district goals.

Comments/Examples:

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MANAGERIAL/SUPERVISORY BEHAVIOR RATING IS TO BE INCLUDED WITH PERFORMANCE APPRAISAL AND DEVELOPMENT GUIDE FOR:

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

Department/Division: \_\_\_\_\_

Job Classification: \_\_\_\_\_

By: \_\_\_\_\_

## Exhibit 12.4 – Performance Dimensions Analysis

### PERFORMANCE DIMENSIONS ANALYSIS

A performance dimension is simply a descriptive heading or skill area under which specific examples of job performance can be classified. Performance dimensions provide the basis for individualizing the performance review to recognize the unique skills necessary for success in each position.

Below are listed numerous performance dimensions. Place a checkmark by each one to indicate whether it is of high, medium, or low importance to success in the position. If the ones listed below do not comprehensively cover the areas important to success in the position, you may consider adding others. Positions classified as non-exempt will typically have five dimensions identified as “high,” and positions classified as exempt will typically have ten dimensions identified as “high.” For your performance review system to be truly meaningful, you should reach an agreement with the employee as to what you both consider to be the most important performance dimensions before completing this form.

- | High                     | Medium                   | Low                      |   |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | ADAPTABILITY – Ability to modify behavior and approach to reach a goal.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | AFFIRMATIVE ACTION – Willingness and ability to meet district-established affirmative action goals.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | ANALYTICAL ABILITY – Ability to evaluate, isolate, and appraise essentials and reach sound conclusions.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | APPEARANCE – Willingness to maintain a high standard of personal grooming.  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | ATTENDANCE – Ability to report to work regularly and on schedule.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | CLOSING ABILITY – Ability to handle customer objections and to close sales.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | COMPREHENSION – Effectiveness and speed with which instructions and assignments are understood and new ideas, methods, techniques, and principles are grasped and retained. |

High  
Medium  
Low

- COOPERATION – Ability to work effectively with others and jointly with a group. Capacity for teamwork.
- CREATIVITY – Ability to come up with imaginative ideas, new approaches, and solutions to business situations.
- DECISIVENESS – Readiness to make decisions or render judgment.
- DEPENDABILITY – Reliability in carrying out instructions, observing rules, respecting confidences, and completing responsibilities.
- DEVELOPING TEAM MEMBERS – Ability to develop team members' working knowledge and skills.
- DRIVE AND WILL TO SUCCEED – Setting high goals of achievement and putting forth extra determination to reach them.
- ENERGY – Ability to achieve a high activity level. Physical effort required to perform responsibilities.
- IMPACT – Ability to create a good first impression, to command attention and respect, to show an air of confidence and to achieve personal recognition.
- INDEPENDENCE – Action based on own conviction rather than a desire to please others.
- INITIATIVE – Active efforts to influence events rather than passive acceptance; self starting.
- JUDGMENT – Ability to act and make decisions based on sound reasoning.
- LEADERSHIP – Effectiveness in bringing a group to accomplish tasks and in getting ideas accepted.
- LISTENING SKILL – Ability to bring out important information in oral communication.
- MOTIVATION – The work's importance in personal satisfaction and the desire to achieve at work.
- ORAL COMMUNICATION SKILL – Ability to make a persuasive, clear presentation of ideas or facts.

High  
Medium  
Low

- |                          |                          |                          |  |
|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | PLANNING AND ORGANIZING – Effectiveness in planning and organizing own activities and those of a group.                                      |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | QUALITY OF WORK – Ability to maintain high standards of performance.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | REGARD FOR EXACTNESS – Ability to work accurately with numbers, etc., for extended periods of time.  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | REPORTS AND PAPERWORK – Meets deadlines regularly and executes all paperwork neatly and effectively.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | RISK-TAKING – Extent to which calculated risks are taken based on sound judgment.  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | SENSITIVITY – Skill in perceiving and reacting sensitively to the needs of others.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | SPECIALIZED KNOWLEDGE – (e.g., engineering, accounting, etc.) Extent of and ability to apply theoretical and practical knowledge and skills. |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | STRESS TOLERANCE – Stability of performance under pressure and opposition.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | TENACITY – Tendency to stay with a problem or line of thought until the matter is settled.   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | USE OF DELEGATION – Ability to effectively use subordinates and to understand where a decision can best be made.                             |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | WRITTEN COMMUNICATION SKILL – Ability to express ideas clearly in writing in good grammatical form.  |

## EXHIBIT 12.5 – MANAGER / SUPERVISOR CHECKLIST

### MANAGER/SUPERVISOR CHECKLIST

The following checklist is another helpful tool in preparing for coaching discussions throughout the performance period. Before conducting employee counseling, answer the questions below about the employee and the situation. Doing so will help you focus on the level of action needed to correct or respond to the situation.

Yes      No

- |       |       |  |
|-------|-------|--|
| _____ | _____ | 1. Does the employee know what is supposed to be done and when?  |
| _____ | _____ | 2. Have I defined the job description and skills required to do the job?                               |
| _____ | _____ | 3. Does the employee have the skills required to do the job?   |
| _____ | _____ | 4. Has the employee been trained sufficiently in the district culture and skills needed to do the job? |
| _____ | _____ | 5. Do I have the time it will take to sufficiently train/orient this person?                           |
| _____ | _____ | 6. Have I adequately defined the job performance expectations?   |
| _____ | _____ | 7. If no, can anyone do the job? Is the standard realistic?  |
| _____ | _____ | 8. If no, can I revise the standard?   |

9. What is the specific difference between the present performance level and the desired performance level?

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10. Define the impact the performance problem has on:

You: \_\_\_\_\_

---

The employee: \_\_\_\_\_

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The work unit/team: \_\_\_\_\_

\_\_\_\_\_

The district: \_\_\_\_\_

\_\_\_\_\_

The customer/client: \_\_\_\_\_

\_\_\_\_\_

Yes

No

\_\_\_\_\_

\_\_\_\_\_

11. Does the employee want the job?

\_\_\_\_\_

\_\_\_\_\_

12. Does the employee have adequate resources to do the job?

If no, what specifically does the employee need? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

13. Are obstacles beyond the employee's control affecting performance?

If yes, what specific obstacles, and can they be removed? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

14. What does the employee need from me during this time to help meet minimal performance standards?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

15. Are consequences positive for positive performance?

\_\_\_\_\_

\_\_\_\_\_

16. Have I been giving high-quality feedback?

If no, how can I improve? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **Exhibit 12.6 – Questionnaire – Employee Evaluation**

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

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

### **PERSONAL GOALS AND NEEDS**

1. Does your position description fit the work or tasks that you are currently involved in?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. What changes or updates are needed in your position description? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. Are there other areas that you would like to focus on that are not in your position description? \_\_\_\_\_  
\_\_\_\_\_
4. What are your educational needs or training that will help in carrying out or completing the District's goals? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. Are you satisfied working for the District? What would make your position more satisfying? Describe your goals both short and long term with the District?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Do you have any concerns regarding current policy, employee management, or Directors to staff, client relations, interagency relations, other?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. Do you have needs of materials or equipment that would help in your District tasks?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. Do you have other comments or concerns?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Please write other comments on back of this sheet or on additional sheet(s) of paper.**

## ***Exhibit 12.7 – Checklist for Performance Evaluation***

### **ITEM COMPLETED**

- ❑ The designated evaluation team is assembled.
- ❑ Perform the evaluation.
- ❑ Prepare for discussion-review of job description and performance standards and gather facts.
- ❑ Arrange a time and place for the evaluation.
- ❑ Open discussion in a friendly, comfortable atmosphere.
- ❑ Clearly state the purpose of the meeting.
- ❑ Ask the employee to discuss their responsibilities.
- ❑ Discuss each job duty in detail, giving necessary praise or admonition.
- ❑ Develop jointly, the next performance standards.
- ❑ Develop jointly, plans for improvement.
- ❑ Allow the employee to respond to writing.
- ❑ Document the results of the evaluation and place a copy in the employee's file.

## Chapter 13 – Discipline and Grievances

This chapter deals with procedures to handle the problems that inevitably arise in any personnel system. The suggestions presented will help district officials minimize the loss in productivity and the general unpleasantness associated with disciplinary actions. Handling these problems in a fair and speedy manner will greatly increase the morale of district employees. It should be the policy of all districts that employees be treated fairly and equitably in all respects. Those employees who feel they have not been treated in this manner should have the right to present their concerns to the appropriate officials for consideration.

### ***Discipline***

District employees are expected to perform and to conduct themselves in a creditable manner. It may be necessary to correct an employee who has not observed some standard of performance or conduct. Generally, correction is accomplished through constructive recommendation or verbal admonishment. Occasionally an employee does not respond to verbal correction, in which case, a more serious form of administrative action is needed. Employees respect, or even prefer, a supervisor who is firm yet fair in all dealings with them. Discipline, when administered in a just, prompt and consistent manner, can actually be a morale booster. Although the major purpose of discipline is to create better habits and standards of work among employees, at times termination of employment is required in the interest of service to the public. In situations where it is determined that disciplinary action needs to be taken, the following should be considered:

**Get all the facts.** Get a complete statement from all persons involved. Review the employee's record for previous related offenses. Consider whether statements of the employee have been influenced by opinions or feelings. If there are inconsistencies in the evidence or insufficient facts, investigate further. Decide on a course of action. Determine seriousness or actual existence of the offense and how discipline should be administered, if appropriate.

**Take action.** The following are suggestions of action which could be taken. The final decision should always be made by the district board, or their designee.

- Charges dropped: Notify employee in writing.
- Verbal reprimand: Speak privately with employee. Be firm but considerate and understanding. Be specific.
- Written reprimand: Be specific. Cite appropriate rules or regulations.
- Removals, Suspensions, Fines, Demotion: Be sure there is a sound basis for the action. Prepare written notification. Serve charges on employee.

**Evaluate results.** Determine whether the action taken has achieved the desired results.

### ***Written Notifications***

Simple justice requires that employees who are to be disciplined be given advance notice of such action and be given the opportunity to reply in advance of the imposition of the penalty. It is a principle of good management that employees clearly understand the reason for discipline.

This understanding can best be accomplished by a written notice of disciplinary action. Exhibits 13.1 – 13.3 of this chapter are letters that can be used as guides in developing notices of disciplinary actions. Exhibit 13.5 is a Disciplinary Action Form which may be used instead of a letter. The following checklist can be used to ensure that the employee is treated fairly and understands the reasons for the action.

- Is the notification specific as to the rule, regulation, or policy that was violated?
- Does the notification clearly state that the employee has a right to respond?
- Is the employee given sufficient time to respond?
- Does the notice state to whom the response should be directed?
- Does the notice state the effective date of the disciplinary action?

To ensure that a disciplinary action notice is received by the employee, it should be delivered by hand or mailed "Certified Mail - Return Receipt Requested."

### ***Disciplinary Review Process***

Employees should have the right to present their issues on their own behalf or through representatives of their choice. A system should be developed that will permit employees to present formal and informal complaints. The filing of complaints should not be considered as reflecting unfavorably on an employee's performance or loyalty. The following procedure is suggested for processing formal and informal complaints.

- Whenever possible, conflicts should be resolved informally between those parties involved.
- If resolution cannot be reached, the matter should be brought to the attention of the day-to-day coordinator. Every effort should be made by the employee and coordinator to come to an agreeable resolution of the complaint within a reasonable period of time (2 weeks). Complaints which the supervisor does not have the authority to resolve should be referred to the District board immediately.
- Unsuccessful attempts at an informal resolution of a complaint should be followed by a formal complaint. The employee should prepare a written statement which states the complaint, describes the remedial action being

sought, and provides all information available in support of the complaint. Upon receipt of a written complaint, the supervisor should make all reasonable efforts to resolve the complaint. If the issue is not resolved, it should be forwarded to the chair of the District board or their designee, within seven days of receipt, along with a statement of efforts made to resolve the problem. The District board should make its decision on the complaint within 15 days of receipt or, if not possible, at the next scheduled board meeting.

**Exhibit 13.1 – Letter of Reprimand**

**SAMPLE LETTER OF REPRIMAND**

CLEAR CREEK SOIL AND WATER CONSERVATION DISTRICT  
Elm City, Oregon 97777

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December 24, 2006

Mr. Joe Underachiever  
PO Box 307  
Clear Creek, Oregon 54321

Dear Mr. Underachiever:

This is a letter of reprimand for your being absent from duty on December 3, 2005 without officially approved leave. You failed to request leave from your supervisor as required by district policy and did not report your absence to the district office during that period.

You previously received a verbal reprimand regarding other unauthorized absences from duty. At that time, your supervisor reviewed district policy with you regarding leave.

While I am limiting disciplinary action in this instance to a written reprimand, this letter will serve as a warning that further unauthorized absences from duty may result in more severe disciplinary action.

Sincerely,

Ted Tough  
Chair

cc: Personnel File  
District Manager

**EMPLOYEE ACKNOWLEDGEMENT**

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

The Clear Creek SWCD is an equal opportunity employer and service provider.

***Exhibit 13.2 – Sample Letter of Suspension***

**District Letterhead**

January 3, 2006

J. Always Tardy  
123 Conservation Avenue  
Clear Creek, Oregon 54321

Dear Mr. Tardy:

This letter is to notify you that you will be suspended from duty without pay for three (3) workdays because of your absence from duty on December 1, 2005, without officially approved leave. You failed to request leave from your supervisor as required by district policy and did not report your absence to the District office during that period.

You have been verbally warned about your attendance record. On November 1, 2005, you were issued a written reprimand regarding your unauthorized absences. Continued absences in this manner may result in the termination of your employment.

Unless you can present evidence supporting why I should not take this action, your suspension will begin January 5, 2006, and end January 7, 2006, at the close of business.

If you desire to present evidence to me in your behalf, you can arrange to meet with me by calling 555-123-4567 or 555-123-7654.

Sincerely,  
Joe Wisdom, Chair  
Clear Creek Soil and Water Conservation District

cc: Personnel File

**EMPLOYEE ACKNOWLEDGEMENT**

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

The Clear Creek SWCD is an equal opportunity employer and service provider.

**Exhibit 13.3 – Sample Letter of Termination**

Also refer to Exhibit 6.10 – Record of Exit

January 3, 2006

J. Always Tardy  
123 Conservation Avenue  
Clear Creek, Oregon 54321

Dear Mr. Tardy:

This is to notify you that your employment with the Clear Creek Soil and Water Conservation District will be terminated because of your continued absences from duty without officially approved leave, the most recent incident being the period December 1, 2005.

You failed to request leave from your supervisor as required by district policy and did not report your absence to the District office during that period. You have received sufficient warning that your continued absences without officially approved leave could result in our terminating your employment.

Unless you can present evidence supporting why I should not take this action, your termination will be effective January 6, 2006, at the close of business.

If you desire to present evidence to me in your behalf, you can arrange to meet with me by calling 555-123-4567 or 555-123-7654.

Sincerely,  
Bill Adair, Chair  
Clear Creek Soil and Water Conservation District

cc: Personnel File

**EMPLOYEE ACKNOWLEDGEMENT**

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

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## ***Exhibit 13.4 – Checklist for Disciplinary Action***

### **ITEM COMPLETED:**

- Gather the facts. Get statements from those involved and make sure the employee has the same understanding of the job that the supervisor has.
- Weigh the evidence. Look for specific cases, not generalities.
- Determine the course of action. Determine reasons for poor performance and seriousness of offense.
- Written notification. Any disciplinary action should be presented to the employee in advance of action. A written notice should be sent to the employee, stating the offense, explaining the District's concerns, and allowing the employee enough time to defend his or her actions.
- Take action:  
[Describe actions taken.]
- Whatever the action, document and file it in the employee's file.
- Always adhere to current district personnel policies.
- Evaluate results. Does the action taken achieve the correct results? If not, what other action might be taken?

**Exhibit 13.5 – Sample Disciplinary Action Form**

**DISCIPLINARY ACTION FORM**

**NAME** \_\_\_\_\_ **POSITION** \_\_\_\_\_

It is necessary to inform you that you have violated the following District standards (for suspension pending investigation, note what type of violation is being investigated):

- |  |   |
|--|---|
| <input type="checkbox"/> Absenteeism / tardiness / failure to report | <input type="checkbox"/> Damage or misuse of equipment / material |
| <input type="checkbox"/> Unsatisfactory performance / carelessness   | <input type="checkbox"/> Unsafe working habits                    |
| <input type="checkbox"/> Insubordination                             | <input type="checkbox"/> Violation of harassment policy           |
| <input type="checkbox"/> Fighting or horseplay                       | <input type="checkbox"/> Violation of drug and alcohol policy     |
| <input type="checkbox"/> Lack of cooperation, rudeness               | <input type="checkbox"/> Other                                    |

**EXPLANATION OF PROBLEM:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DISCIPLINARY ACTION TAKEN.** Based upon the seriousness of your conduct, past record, length of service, and any other factors the District considers relevant the following disciplinary action is taken:

- VERBAL WARNING.** You need to improve and sustain improvement as explained above.
- WRITTEN WARNING.** Failure to correct this problem and/or future problems will result in further disciplinary action including discharge.
- SUSPENSION WITHOUT PAY.** Effective on \_\_\_\_\_ for \_\_\_\_\_ days to return to work on \_\_\_\_\_. Again, failure to correct this problem and/or future problems will result in further disciplinary action, including discharge.
- DECISION-MAKING LEAVE.** Effective on \_\_\_\_\_, you are on a one-day paid leave. The purpose of this leave is to give you an opportunity to decide whether you want to continue working for the District. Your continued employment is conditioned upon your decision to correct the above problem(s) and make a "total performance commitment" satisfactory to us. If you are unwilling to make the commitment, you are telling us you do not wish to work for the District at standards we consider acceptable. Consequently, your decision will be treated as a voluntary resignation.
- SUSPENSION WITHOUT PAY PENDING INVESTIGATION.** You are hereby suspended without pay pending an investigation starting on \_\_\_\_\_. This suspension may result in discharge or other disciplinary action. You will be given an opportunity to explain your conduct before the District determines that disciplinary action, if any, is appropriate.



## Chapter 14 – Professional Development

Effective employee development programs should meet the immediate and long-range goals of the district as well as the personal goals of employees. The concept of providing the opportunity, budgeting the necessary funds, and arranging for the training of employees may be new to many districts but should be seen as an investment in the future of the district.

### ***Determining the Need***

Both the district and employees are responsible for seeing that training needs are identified, discussed, and acted upon. Some ways in which training needs can be determined are:

- Daily observations.
- Performance reviews.
- Progress reports.
- Job application form.
- Discussions with employees.

When training needs have been determined, they should be recorded as precisely as possible, including methods, objectives and formal course names where appropriate. The Development Plan Form (Exhibit 14.1) is a convenient way of recording training needs.

### ***Setting Training Objectives***

Before any training is scheduled, a definite objective should be set that will let the employee know exactly why the training is being provided. Employees should have an observable change in ability, skill, or knowledge after receiving the training.

### ***Deciding How Training will be Accomplished***

Training should be accomplished whenever possible through self-development or on-the-job training. Self-development includes home study courses, planned experience, conferences, course work at local schools and participation in professional societies. On-the-job training requires supervisor input or input from specialists. Identified needs may be met by formal training courses at the NRCS training centers, at state-sponsored and organized training courses, at local vocational schools, at colleges and universities, and other opportunities.

### ***Evaluating Training***

Training should be evaluated on the objectives set prior to providing the training. The results of training should be reflected in improved performance, utilization of new skills and acceptance of increased responsibility and new duties. Job descriptions and performance standards should be reviewed often.

### ***Responsibility for District Employee Development Program***

It is unrealistic to believe all district board members will become involved in their district's employee training program. However, it would be good to appoint one board member or associate to oversee the district's training program. The board or its member appointed as employee supervisor, are those ultimately responsible for all their employees' training.

### ***Individual Employee Development Plans***

As with job descriptions and performance standards, development plans should be tailored to the individual. The employee and the employee's supervisor should jointly prepare any training needs, objectives, and plans for satisfying the needs. Development plans should be done at the same time as performance plans.

Normally a new employee is operating at full capacity within one year of appointment. During the first six months a general orientation should be provided along with assignments that will show where the job fits into the organization and what is expected from the individual. Because basic orientation to the job is very important, it should be provided as soon as possible after appointment. The second six months gives the individual the opportunity to gain confidence and to concentrate on developing proficiency in the job.

**Exhibit 14.1 – Employee Development Plan [Sample Form]**

TRAINING PLAN FOR \_\_\_\_\_ [INSERT POSITION TITLE OR EMPLOYEE NAME]

Name or position title: \_\_\_\_\_

Date \_\_\_\_\_

SUBJECT	REFERENCES	METHOD	TRAINER	DATE	CERTIFICATION
Insert topics, issues, subjects on which training is needed.	Insert guidebooks, standards, manuals stating standards for acceptable performance or training materials.	Methods to be used in training.	Individuals, schools for training.	Scheduled training dates.	If applicable, credentials to be acquired resulting from training.

## ***Exhibit 14.2 – Checklist for Employee Development***

### **ITEM COMPLETED**

- ❑ Determine if training funds are in district budget.
- ❑ Meet with employee soon after entrance on duty date to discuss development needs.
- ❑ Meet with NRCS or others who will provide training to ensure their input.
- ❑ Develop a written training plan that covers the following:
  - Training item to be provided
  - When training will take place
  - Who will provide training
- ❑ Ensure that employee understands that they have a major responsibility to ensure that the development plan is followed.
- ❑ Ensure that all parties involved understand their responsibilities.
- ❑ At performance review time and at other times as necessary, review development plan with employee.
- ❑ Update development plan, at least annually.

## CHAPTER 15 – POLITICAL INVOLVEMENT

This Chapter does not establish new policy, but, provides information about state laws governing the political activities of District employees in their roll as public employees.

### ***Restrictions on Political Campaigning***

**ORS 260.432.** Public employees may not be involved in promoting or opposing any initiative, referendum or recall petition, ballot measure or candidate “while on the job during working hours.” This precludes, among other activities, the preparation of materials used in support or opposition, as well as their distribution during regular working hours.

Lunch hours and breaks, when employees are considered to be off duty, may be used for political activity, however, the activity must take place away from the work place and the employee may not use the District phone, paper or other equipment or supplies. A public employee may only provide impartial, factual information related to a measure or candidate as a part of his or her job.

In addition, one public employee cannot ask or direct another public employee to prepare or distribute information that expresses such support or opposition. Public employees may not be involved in activities such as collection of funds or receipt and distribution of advocacy or recruitment correspondence for political action committees on their work time. A public employee may be involved in political activity during the employee’s personal time off the job. Political buttons may be worn at any time with some restrictions applicable to polling places on Election Day.

**Speeches.** If any public employee makes an informational speech regarding an initiative, referendum, recall petition, candidate or ballot measure, while on his/her work time or in an employee’s “official capacity,” he/she must make sure the speech is not advocacy. A public employer can tell employees about the possible effects of a measure, such as possible layoffs; but the public employer must not threaten employees with financial loss if they vote one way or another.

### ***Written Materials***

**Impartiality.** Written material prepared or distributed by public employees must be impartial. “Impartial” means equitable, fair, unbiased, and dispassionate. The material needs to have some balance of factual information. This means that the material cannot lead the voters to support or oppose the measure by selective use of factual material, even if the material does not expressly urge a yes or no vote. The material will probably be determined to be advocacy if, taken as a whole, it is clearly intended to generate votes for or against the measure.

The best suggestion may be to let a Political Action Committee(s) that is formed, and can legally produce and distribute advocacy materials, handle getting information on a petition or ballot measure to the public. If a District or one of its employees prepares written information about an initiative or ballot measure, which is to be used to inform the public, the District is urged to contact the Secretary of State's office in Salem and request an evaluation of the information before it is distributed.

### ***Public Notice***

State law requires each public employer to post in a conspicuous place, likely to be seen by its employees, a notice printed or typewritten, showing information contained in ORS 260.432. A copy is included at the end of this chapter. This notice may be duplicated, if needed.

### ***Ballot Measures***

**Public Funds.** Employees may not spend public funds for any purpose not authorized by law. A violation of this statute [ORS 294.100(1)] holds the employee personally liable for money improperly spent. Oregon courts have found this improper use of funds to apply to either the support or opposition of measures which are/were before the voters.

**On the Job.** ORS 260.432 prohibits employees from promoting or opposing the adoption of a measure while on the job during working hours. It also prohibits "any person" from requiring or attempting to require a public employee to give money, service or anything of value to promote or oppose the adoption of a measure. The penalty for failure to comply could be up to \$250 for each violation, which is assessed to the employee personally, not the District.

### ***Permitted Activities***

**ORS 260.432.** This statute does not restrict the right of public employees to express their personal political views. Thus, public employees may campaign for or against measures or candidates in their personal, as opposed to official, capacity while off the job. However, the employee should not identify himself/herself as representing the district and cannot use district equipment or supplies.

**On the Job.** The Department of Justice has concluded that public employees may only express their personal political views, while on the job, through such activities as wearing campaign buttons, subject to limited regulation by the public employer to the extent necessary to avoid interference with the employee's duties and the employer's mission. Employers may establish policies restricting expression of personal political views (posters at work site or buttons) where such expression reasonably may be interpreted by others as officially endorsed by the public employer.

See Exhibit 9.1 for information on the Hatch Act.

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