



Employee Relations Handbook

A resource for San Mateo County Managers and Supervisors

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COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT

DEDICATION

This handbook is dedicated to Tim Sullivan, whose passion for our profession shines throughout the pages that follow.

HOW TO USE THE EMPLOYEE RELATIONS HANDBOOK

This Handbook is to be used as an aid and guide. It is not, however, a replacement for the advice and guidance available from Employee & Labor Relations.

Each section covers an area of inquiry with a brief introduction, then answers the questions most frequently asked of Employee & Labor Relations by supervisors and managers. Links provided throughout will take you to sample letters and other documents, such as County policies.

Our purpose is to make the handbook as complete as possible, so please call Employee & Labor Relations if there is an issue you would like addressed in this Handbook, and we may incorporate it in a future update.

You can find contact information for your department's Employee & Labor Relations representative, as well as access the current Memoranda of Understanding, "Rules of the Civil Service Commission" and "Employer-Employee & Labor Relations Policy" via PDF, by visiting us online at <https://www.smcgov.org/hr/employee-and-labor-relations>.

TABLE OF CONTENTS

DEDICATION..... 2

HOW TO USE THE EMPLOYEE RELATIONS HANDBOOK 3

TABLE OF CONTENTS 4

1. STATEMENT OF PURPOSE 11

2. DOCUMENTATION..... 12

 A. What is documentation?..... 13

 B. What should be documented? 13

 C. What is the benefit to me as a supervisor?..... 13

 D. Itinerary for management review of supervisors 13

 E. Description of files to be maintained 14

Example #1: Probationary Rejection for Attendance..... 16

Example #2: Probationary Extension due to Performance 19

Example #3: “Special” Below Standard Evaluation..... 22

3. PROBATIONARY PERIODS..... 26

 A. Who serves a probationary period?..... 26

 B. How long are probationary periods?..... 26

 C. What are your supervisory responsibilities during a probationary period? 27

 D. Can a probationary period be extended?..... 27

 E. How does an employee become permanent? 28

 F. How are employees notified that they have failed to pass their probationary period? 28

 G. Can an employee transferring to another department be required to complete a new probationary period?..... 28

 H. Can an employee grieve or appeal a probationary dismissal? 29

 I. Can a probationary employee take vacation time? 29

Sample Request for Extension of Probationary Period #1 30

Sample Request for Extension of Probationary Period #2 31

Sample Termination Letter for Probationary Employee..... 32*

Request for Transfer or Voluntary Demotion 33

Sample Resignation Form..... 35

Sample Acknowledgment and Acceptance Letter..... 36

4. INTRODUCTION TO PERFORMANCE AND CONDUCT	37
A. What is the difference between performance and conduct?.....	37
B. Why do we make a distinction between performance and conduct?	37
C. What is corrective action?.....	38
D. What is disciplinary action?.....	38
E. What is non-punitive discipline?.....	39
<i>Is It Performance or Conduct?</i>	<i>39</i>
5. THE SKELLY PROCESS	40
A. 3 Phases of the Skelly Process	45
1. <i>The Intent Letter</i>	45
2. <i>The Employee’s Reply</i>	47
3. <i>The Decision Letter</i>	49
6. PERFORMANCE.....	50
A. What is the supervisor's responsibility regarding employee performance?	50
B. What are performance expectations?	51
<i>Sample Performance Improvement Plan #1</i>	<i>55</i>
<i>Sample Performance Improvement Plan #2</i>	<i>56</i>
<i>Sample Performance Improvement Plan #3</i>	<i>57</i>
<i>Sample Performance Improvement Plan #4</i>	<i>59</i>
C. What is the process for preparing an employee performance evaluation?.....	60
D. What should be done if an employee is not meeting performance expectations?.....	62
E. How does the supervisor know what to do next, and when to do it?	63
<i>Flowchart for Performance Evaluations</i>	<i>64</i>
<i>Sample Pre-Evaluation Memo #1</i>	<i>64</i>
<i>Sample Pre-Evaluation Memo #2</i>	<i>67</i>
<i>Sample Supervisor Transition Memo.....</i>	<i>70</i>
<i>Sample Employee Performance Report</i>	<i>72</i>
<i>Sample Skelly Intent to Dismiss Letter – Poor Performance.....</i>	<i>74</i>
<i>Sample Skelly Decision Letter – Poor Performance.....</i>	<i>77</i>
7. CONDUCT	80
A. What is the supervisor's responsibility regarding employee conduct?.....	80
B. What should be done if an employee does not adhere to conduct expectations?.....	80
C. How does the supervisor know what to do next, and when to do it?	81
D. What is progressive discipline?.....	81

Non-Punitive Discipline Program Description..... 82
Sample Counseling Memo for Discourtesy..... 85
Sample Letter of Warning for Waste of County Time 86
Sample Letter of Reprimand for Discourtesy..... 87
Sample Skelly Intent Letter – Conduct (Non-Punitive Discipline)..... 88
Sample Skelly Decision Letter – Conduct (Non-Punitive Discipline)..... 90
Sample Skelly Letter of Intent - Dismissal 92
Sample Skelly Decision Letter – Dismissal..... 94

8. CONDUCTING EMPLOYEE INVESTIGATIONS..... 97

A. What is the supervisor's responsibility in the area of employee investigations? 97
B. Should the employee be removed from the work area during the investigation? 98
C. What is the supervisor's responsibility if the workplace allegation involves potential criminal action?..... 99
D. What is the supervisor's responsibility when the alleged misconduct is of a non-criminal nature? 99
E. What if the allegation involves potential criminal activity away from work? 101
F. Is the employee entitled to Union representation during administrative interviews? 102
G. What is the investigatory file used for?..... 103
H. What is the manager's role in employee investigations?..... 103
I. What do I do if I suspect that an employee is under the influence of alcohol or drugs while at work? 104
J. What do I do if an employee makes a threat to me and/or to anyone else? 104

Report of Incident or Unsafe Condition..... 107
Sample Interview Questions..... 107
Sample Assignment to Work at an Alternate Location Letter..... 111
Objective Signs of Impairment..... 112

9. TARDINESS AND ABSENTEEISM..... 113

A. What can I do to avoid leave problems? 113

Tardiness..... 114
Sick Leave 115
Vacation..... 115

B. How does a supervisor address leave problems? 116
C. What are some examples of leave problems? 117
D. What is the difference between leave without pay, and absence without leave?..... 120
E. Must vacation leave be approved when an employee is tardy? 120

- F. Is an employee entitled to use vacation leave whenever it is requested, if they have a balance of vacation hours? 120
- G. Must every request for sick leave be approved? 120
- H. When can a supervisor request a doctor's note?..... 121
- I. Does an employee have to provide a release to work after every illness?..... 122
- J. If an employee brings in doctor's notes as required, is there anything a supervisor can do about excessive unscheduled absences? 122
- K. How do I determine whether an employee’s attendance constitutes “excessive absenteeism”? 122
- L. Can an employee use other accrued leave in lieu of sick leave to cover unplanned medical absences? 123
- Sample Counseling Memo for Tardiness* 124
- Sample Letter of Warning*..... 125
- Sample Letter of Reprimand – Absenteeism* 126
- Sample Skelly Intent Letter – Attendance (Non-Punitive Discipline)* 127
- Sample Skelly Decision Letter – AWOL (Non-Punitive Discipline)* 129
- 10. THE EMPLOYEE ASSISTANCE PROGRAM (EAP) 131**
 - A. How can an employee use the services of the EAP? 131
 - B. What is the supervisor's responsibility in suggesting the EAP to an employee? 131
 - C. What about a supervisor/manager referral? 132
 - D. Must an employee attend EAP if referred? 132
 - E. How is an EAP referral made?..... 132
 - Management Referral Guidelines*..... 133
- 11. OVERVIEW – GRIEVANCES AND APPEALS 135**
 - Appeal/Grievance Matrix*..... 136
- 12. THE GRIEVANCE PROCESS 137**
 - A. What is the first step of the grievance process? 137
 - B. What is the second step of the grievance process? 137
 - C. What is the third step of the grievance process? 137
 - D. What is the fourth step of the grievance process?..... 138
 - The Grievance Process* 139
- 13. THE CIVIL SERVICE APPEAL PROCESS 140**
 - A. What issues may be appealed to the Commission?..... 140
 - B. How does the Commission handle appeals? 140

C. What are the guidelines for preparing for and presenting cases before the Civil Service Commission? 140

Appeals of Substandard Performance Evaluations 141

Appeals of Disciplinary Actions..... 142

14. CLASSIFIED AND UNCLASSIFIED EMPLOYMENT 145

A. Why are positions unclassified?..... 145

B. Who decides what positions are unclassified? 145

C. Measure D..... 145

D. Why are there classified and unclassified employees in the same jobs? 145

E. How are people hired into the unclassified service? 146

F. What happens if a position is changed from classified to unclassified? 146

G. What happens if a position is changed from unclassified to classified? 146

H. Can a person in an unclassified position take County examinations for classified positions? Can they take promotional examinations? 146

I. If a person is in an unclassified position can they transfer to classified positions? 147

J. If a person in a classified position wants to take an unclassified position, what happens? 147

K. Do health benefits for classified employees differ from those of unclassified employees? 147

L. Do retirement benefits or obligations for classified employees differ from those of unclassified employees? 147

Classified and Unclassified Employees – Comparison of Terms and Conditions of Employment
148

15. SENIORITY & LAYOFF 149

A. What is seniority? 149

B. How is seniority calculated? What hours are included in seniority? 149

C. Does overtime count toward seniority?..... 149

D. Does FMLA time count towards seniority? 149

E. Does time on workers’ compensation count towards seniority? 149

F. Does Extra Help time count? What if I “bought my extra help time? 149

G. Does unclassified service count towards seniority?..... 149

H. What about an approved leave of absence? 149

I. How does voluntary time off (VTO) affect seniority? 149

J. Why do I have less seniority than someone who was hired after me? 149

K. What if I have the exact same seniority as another person – how is a tie broken? 150

L.	I worked for the County for five years, then left to take another job for a couple years. I've been back for three years. How much seniority do I have?.....	150
M.	Does my probationary status affect my seniority?.....	150
N.	How are layoffs determined?.....	150
O.	How does unclassified service impact seniority?.....	150
	<i>Process for Employees at Risk of Layoff</i>	151
	<i>Post-Employment Rights</i>	152
16.	WORK SCHEDULES	153
A.	Rest Breaks.....	153
B.	Alternative Work Schedules.....	153
C.	What are the various work schedules?.....	154
D.	What factors should be considered in deciding whether to offer alternative work schedules or telework?.....	155
E.	Informal Flex Schedules.....	156
	<i>Sample 4/10, 4/9 +4, and/or 9/80 Work Schedule Agreement</i>	158
17.	LEAVES OF ABSENCE	162
A.	If a Leave of Absence is approved, do I have to hold the employee's position vacant?.....	162
B.	What is a Leave of Absence for Illness or Injury (Medical Leave)?.....	162
C.	What is Family and Medical Leave (FMLA)?.....	163
D.	What conditions must be met for an employee to be eligible for FMLA/CFRA consideration?.....	163
	<i>What is a "Serious Health Condition"?</i>	164
	<i>What should be included on the medical certification form from the doctor?</i>	164
	<i>What is "Reduced" or "Intermittent" FMLA/CFRA leave?</i>	164
	<i>How do I know whether a request for time off should be considered FMLA?</i>	164
	<i>How does designating a leave of absence as FMLA/CFRA benefit the employee?</i>	165
E.	What is a Parental Leave of Absence?.....	165
F.	What is a Personal Leave of Absence?.....	165
G.	Can employees combine different types of leaves of absence?.....	166
H.	How are leaves of absence approved and how are the forms processed?.....	166
I.	What process is used when an employee returns to work after a leave of absence?.....	166
	<i>Types of Leave and How They May Interconnect</i>	167
	<i>Leave of Absence for Employee's Own Health Condition (Medical Leave)</i>	167
	<i>Leave of Absence for Personal Reasons</i>	167

<i>Parental Leave of Absence</i>	167
<i>Military Leave of Absence</i>	167
<i>Educational Leave of Absence with Pay</i>	168
<i>Other Leave</i>	168
<i>Leave of Absence Request Form</i>	169
18. LABOR RELATIONS	170
A. What is the role of a union?	170
B. What is the difference between a union business agent and a steward?	170
C. What are a steward's rights regarding attendance at meetings?	170
D. When is an employee entitled to union representation at a meeting with their supervisor?	171
E. How do stewards request release time, and must it always be granted?	171
F. What is "prior notification," and why is it required?	171
G. What is "meet and confer?"	172
<i>"Meet and Confer" Flowchart</i>	176
H. What can I do to encourage successful labor relations?.....	177
<i>Sample Notice to Union(S)</i>	178
<i>Positions Represented by Unions</i>	179
19. REFERENCE CHECKS	180
A. What guidelines should I follow?	181
B. What other facts do I need to know?.....	181
C. What are the most common pitfalls?.....	182
Online Resources	183
Bulletins	183
Index	246

1. STATEMENT OF PURPOSE

The purpose of the handbook is:

- To provide a basis for training all supervisors and managers in the basics of Employee & Labor Relations
- To provide uniform Employee & Labor Relations references, examples, and procedures and,
- To provide an easy-to-use reference to serve as a first point of information whenever a supervisor or manager is faced with an Employee Relations or Labor Relations issue.

The handbook was designed to provide the user with a maximum amount of information in an easy-to-use format. Each major topic (e.g., "probationary employees," "leaves of absence," "Skelly Process," etc.) is discussed first in an introductory paragraph, followed by answers to the most commonly asked questions regarding that topic.

This handbook is a source of information, but it should not solely be relied upon. Each Employee & Labor Relations issue you face will have unique circumstances. You are encouraged to discuss such issues with your manager and your [Employee & Labor Relations representative](#).

The role of Human Resources:

Department heads and department managers are expected to work collaboratively with the centralized Human Resources Department on all matters which impact the hiring, employee management and working conditions of employees. Per the County Ordinance Code (2.70.010) the "Director of Human Resources shall be responsible for services and activities related to personnel, including recruitment, selection, classification, and the amount of compensation of County employees, labor relations and employee benefits administration, organizational development and training; risk management; safety; insurance; and/or such services as may be assigned by the County Manager, including Office of Shared Services."

The intent of this requirement is to provide consistency across County departments. Changes which appear desirable in one department could have an undesirable effect in other departments. Therefore, Countywide consideration must be evaluated and coordinated by the Human Resources Department. Additionally, since the Human Resources Department is responsible for negotiating the Memoranda of Understanding for the County, all questions, interpretations or desired changes related to these agreements must be coordinated through the Human Resources Department.

2. DOCUMENTATION

Documentation is used for:

- Positive Feedback and Acknowledgement
- Career Development
- Showing Patterns
- Probationary Determinations
- Performance Evaluations
- Disciplinary Actions
- Corrective Actions

Documentation should:

- Be a clear record of one-on-one discussions with employees regarding their performance/conduct.
- Be factual and objective.
- Be timely (close to the date of the event being documented.)
- Be dated and signed/initialed by the supervisor/manager.
- Be kept in the supervisory drop file set up for each employee and consulted in the areas listed above.

Documentation should not:

- Be personal or include subjective judgments or opinions. Supervisory files are discoverable and can be subpoenaed.
- Be too informal or anecdotal (it may be used by others in conduct or performance cases.)
- Be too old (documentation should normally not be more than one year old, unless it relates to an ongoing issue that has not yet been resolved)
- Be used unless it has been shared with the employee.

A. What is documentation?

Any record that is kept regarding an employee's performance or conduct – whether they pertain to accomplishments or areas of concern. Documentation may consist of copies of actual work products, written statements by or about employees, and your notes of meetings with employees.

SEE EXAMPLES OF DOCUMENTATION.

The record you keep when investigating alleged misconduct is also considered documentation but should be kept in a separate “investigation” file. [See Section 8: Conducting Employee Investigations](#) for more information regarding conducting investigations.

B. What should be documented?

You should document BOTH the positive and negative issues that come to your attention:

- If an employee has done a good job (e.g., worked on a special project, maintained an excellent error rate, was effective with a difficult customer), document these observations and share them with the employee. Positive documentation is a powerful incentive for people to continue to achieve a high level of performance.
- If an employee has exhibited poor work habits, has tardiness or attendance problems, isn't meeting quality or quantity standards, is discourteous, or has other such performance or conduct problems, you should document your observations relative to these problems and promptly share them with the employee. This sort of documentation should be presented in a constructive manner to assist the employee in improving.

C. What is the benefit to me as a supervisor?

- Many times, simply documenting and sharing problems with employees often helps to resolve them.
- You cannot expect improvement on an employee's part if you do not share your concerns that a problem exists and discuss alternatives for their performance or conduct.
- If the problem persists and you must take corrective or disciplinary action, the documentation is necessary to serve as a record of your previous efforts to bring the problem to the employee's attention and to assist him/her in resolving the problem.
- Documentation is an invaluable tool to help you more quickly and effectively prepare comprehensive and meaningful performance evaluations. It is much easier to review a written file than to try to remember an entire year of employee performance.

D. Itinerary for management review of supervisors

With regards to documentation, managers need to ensure that each supervisor has established a file for each of their own direct reports that contains:

- 1 A copy of the employee's standards and objectives dated as to when they were shared with the employee.
- 2 Procedures or plans for workload reviews, work in process reviews or customer surveys.

- 3 Documented meetings with the employee where internal memoranda or department procedures were introduced and discussed.
- 4 A schedule for periodic meetings with the employee to discuss performance and conduct issues. A supervisor may meet with an employee on a more frequent basis (e.g. weekly) while meeting with other employees in the unit less frequently (e.g. biweekly.)
- 5 Feedback given to the employee, in written form, regarding the employee’s progress in meeting the standards, exceeding them, or their deficiencies.
- 6 A performance appraisal prepared within the last year, which covers one year (unless it was a Special Review or a probationary evaluation.)

E. Description of files to be maintained

This section explains what the various files are, where they are maintained in the County, and what types of materials should be placed in each file.

- 1 The **Civil Service Personnel File** is the official personnel record for each employee and is maintained in the Human Resources Department. This file contains copies of all personnel actions, Leave of Absence forms, performance evaluations, disciplinary letters, reprimands, and other records of an employee's employment history. An employee must be provided with a copy of any document to be placed in this file.
- 2 **Department Personnel Files** are maintained in most departments to provide immediate access to records. These files contain the same material as the Civil Service Personnel file and items that are department specific such as signed policies and training certifications.
- 3 **Supervisory Files** are the informal files maintained by supervisors for each of their employees. These files contain permanent records only if the department does not maintain a departmental file, and records of a temporary nature. Examples of records to be maintained on a permanent basis are copies of performance evaluations and documents signed by the employee acknowledging receipt of a policy or procedure (e.g., incompatible activities). Supervisors may also wish to maintain a record of the name and phone number of an individual designated by the employee to contact in case of emergency.

Documents to be maintained on a temporary basis include notes made by the supervisor regarding the employee's performance or conduct (positive or negative), memos from the supervisor to the employee confirming counseling sessions, memos or notes from third parties regarding the employee, and samples of completed work products. These notes, memos, and work samples form the basis for regular performance discussions and should be used in preparing evaluations and recommending personnel actions. Any documentation of performance/conduct problems or of superior performance should be shared with the employee as soon as possible. Once an employee has corrected a problem, notes relative to that problem should be purged from the file. For example, documentation of an employee's attendance problem should be purged from the file once that employee's attendance record indicates they have corrected the problem.

If an employee transfers within their department, the supervisory file should be forwarded to the new supervisor, after being purged of any extraneous or outdated records. When an employee terminates employment with the County or moves to another department, these files should be destroyed.

Example #1: Probationary Rejection for Attendance

Supervisory Notes – Jill Smith

Administrative Assistant I (1040 hours probationary period)

[PROBATIONARY REJECTION FOR ATTENDANCE]

9/10/25 (Monday, 9 a.m.) – I met with Jill Smith who started her County employment today. We went over the list of written expectations I provided which include department-specific expectations as well as generic expectations as a County employee. We then reviewed the resource materials including the reference manual and her training schedule for the next four weeks. I encouraged her to take notes during our meetings and to keep them in the resource binder that also includes desktop procedures and additional reference materials. We reviewed her work schedule that we had already discussed (8:00 a.m. to 5:00 p.m. with lunch from 12:00 p.m. to 1:00 pm). She provided me her home phone, cell phone, and emergency contact information for our departmental personnel files. I let her know to come to me if she has any questions and/or concerns regarding any instructions given. I explained that we'd initially meet each week to review her work. I then introduced her to her coworker Ben who has been in the department for several years and can provide her assistance in my absence.

9/25/25 (Tuesday, 11 a.m.) – I reviewed the work she had completed the past week that included setting up project files for me and preparing handouts for the meeting last Friday. She also set up the room including the equipment for a PowerPoint presentation by one of the attendees. She handled that last minute request promptly and efficiently and I told her how helpful that was for me. Jill appreciated the positive feedback. She then provided me an overview of her pending assignments and what she expects and/or needs to complete by Friday.

10/4/25 (Thursday, 9:20 a.m.) – Jill was twenty minutes late to our meeting because she was handling a difficult client on the phone and had emailed me during that call about the situation saying she'd be right in after the phone call. When she arrived, we discussed the phone call and whether further action was needed. She felt she had addressed the client's concerns but wanted suggestions on how best to handle difficult calls in the future. I provided suggestions that I have found to be effective and recommended she take the County training "Conflict Resolution: Dealing with Difficult People" which others in the department have found useful. I told her I would enroll her through the County's Learning Management System (LMS) which is accessible online. I encouraged her to review the course catalog to see if there were any other courses she'd be interested in taking. We then reviewed her work the previous week. I commented that the draft proposal document she had typed for Mary, the department director, was completed on time. However, it had several grammatical and typographical errors. Jill explained she couldn't read Mary's writing and didn't want to bother me to clarify what was written. I told her that that it would be appropriate to ask for clarification before submitting the final draft to me for review. She assured me that she would do so in the future and expects she'll improve in this area as she becomes more accustomed to Mary's writing. Since I will be on vacation next week, we scheduled our next supervision for 10/15/25.

10/15/25 (Monday, 2 p.m.) – I met with Mary this morning to review what occurred while I was out last week. Mary mentioned Jill's attendance last week during my vacation. Jill was late on Thursday

(10/11/25 – twenty minutes,) which had been brought to Mary’s attention by Ben, as he had to open the office and cover the reception desk until Jill arrived; he was unable to assist Mary on a project until Jill arrived. Jill had not called Mary to tell her that she was going to be late, nor did she notify her when she arrived to work. Since Jill had not notified Mary about her tardy when she arrived, Mary asked Jill to come to her office at 9:30 a.m. and let her know she was aware that she was late that morning. Jill explained she set her alarm clock incorrectly, so she left her home fifteen minutes late. Mary asked Jill if she was aware of our expectations about calling in no later than thirty minutes prior to start time if she was going to be late. Jill explained she was aware of this expectation and assured Mary it wouldn’t happen again. Jill asked Mary if she could shorten her lunch to forty minutes to make up the time and her request was granted. During our meeting today, I again asked if she had any questions and/or needed clarification about expectations regarding her work schedule and/or calling in if there was any change to that schedule. She told me she understood what’s expected of her and had no further questions. We then reviewed the work she completed during my vacation and let her know that Mary was pleased with the meeting minutes she had prepared for her last week. No additional revisions were needed, and Mary was able to distribute them as needed. Jill then asked me if she could change her work hours from 9 a.m. to 6 p.m. I told her that our office hours are 8 a.m. to 5 p.m. and she’s responsible for opening the office and covering the reception desk. I told her I could not adjust her work schedule.

10/26/25 (Friday) – Jill called me at 9 a.m. to say she was having car trouble and would not be coming in.

10/29/25 (Monday, 9 a.m.) – I met with Jill to discuss her two unscheduled absences since she started. I explained that it’s crucial that she is reliable; it makes a big impact when she’s not here. I also reiterated that she needs to call Mary or me by 7:30 a.m. – within thirty minutes of her start time – if she’s not coming in so we have time to make alternate arrangements for front desk coverage. Her absence last Friday was her second unscheduled absence. She initially became upset and said that I wasn’t being fair. I told her that the expectations given to her were the same expectations given to other employees in the department and I’m treating her no differently and expect the same from her. She agreed to comply with these expectations and said she would call Mary or me by 7:30 a.m. if she’s late and/or not coming in.

11/9/25 (Friday) – I met with Jill, and we reviewed her work for the previous week and the project due by 11/20. She had typed up the meeting agenda and still had to make copies of the handouts and articles to be included in the participants’ packets – twenty total. She attended the County training course about dealing with difficult people and explained how she can incorporate the information and tips she learned in that class into her work.

11/15/25 (Thursday, 3 p.m.) – I met with Jill and reviewed her “To Do” list for the meeting next week. She’s made the copies of the handouts and still needs to copy the five articles. She expects to complete the participants’ packets by close of business Monday. I told her if she needed any help to ask Ben or me. She said she has everything under control and does not anticipate any difficulties getting the packets done.

11/16/25 (Friday, 3 p.m.) – Left work two hours early – attend to personal business.

11/21/25 (Wednesday, 2 p.m.) – I met with Jill and reviewed her work regarding yesterday’s meeting. The packets were completed on time yesterday and the meeting room was set up as I had requested.

During the meeting, she periodically checked in with me to see if I needed anything. I told Jill I appreciated her extra efforts.

11/30/25 (Friday) – Jill was a no show/no call (AWOL). I left her messages on her home phone and cell phone around 9 a.m. informing her to call me back immediately. She called me at 12:00 p.m. to say she was lost power at her house and wouldn't be in. She told me she didn't call me earlier because she slept in as her alarm didn't go off and forgot to call. I told her to plan to meet with me when she returned to work.

12/3/25 (Monday, 10 a.m.) – I met with Jill regarding her AWOL (absence without Leave) last Friday. I explained that her AWOL last Friday was unacceptable and will not be tolerated. I advised her that I had verbally counseled her regarding her attendance about her three unscheduled absences; yet I had not seen any commitment on her part and her unscheduled absence last Friday was considered AWOL. Due to attendance concerns, I advised Jill that she was being rejected during her probationary period, and I gave her a letter prepared by Employee Relations to that effect. If she wanted to resign, she had until tomorrow at 10 a.m. to submit her resignation, and the rejection would be changed to a resignation.

[\[SEE SECTION 3 FOR MORE INFORMATION REGARDING PROBATIONARY PERIODS\]](#)

Example #2: Probationary Extension due to Performance

Supervisory Notes – Jon Jones

Community Worker II (1040 hours probationary period)

[PROBATIONARY EXTENSION DUE TO PERFORMANCE]

8/6/25 (Monday, 9 a.m.) – I met with Jon Jones who started his County employment today. We went over the list of written expectations provided which include department-specific expectations as well as generic expectations as a County employee. We then reviewed the resource materials including the reference manual and his training schedule. I encouraged him to take notes during our meetings and to keep them in the resource binder which includes additional reference materials. We reviewed his work schedule that we had already discussed (7:00 a.m. to 4:00 p.m. with lunch from 12:00 p.m.-1:00 pm). He provided me his home phone, cell phone, and emergency contact information for our departmental personnel files. I explained that we'd meet biweekly for supervision. If he had any questions or needed any clarification, I advised him to come see me at any time. I then introduced him to his coworkers Anne and Bob who have been in the department for many years and can provide him assistance in my absence.

8/21/25 (Tuesday, 11 a.m.) – I reviewed the work Jon had completed and discussed the outreach client visits he did with Anne and Bob (two visits with each.) Anne let me know that Jon was very quiet during their two visits, and he only observed her interaction with the clients. Jon didn't offer to help her and/or engage in any conversation with the clients. Bob provided me with very different feedback regarding his experiences with Bob on his client visits. Jon was helpful with his clients in getting them in/out of the car and to their respective appointments. He was very pleasant with the clients as well as professional and courteous. When I asked Jon about these client interactions, he explained he felt more comfortable with Bob rather than Anne. When I asked him to explain further, he said that he thought Anne didn't seem to want him there and was bothered, almost annoyed, in having to train him. Jon thought it was better if he stayed quiet and remained as inconspicuous as possible. I thanked him for sharing this information with me and said that I would speak with Anne. He said he would prefer to handle it himself. I told him I would respect his request and would check with him in our next supervision to find out the status between him and Anne.

9/5/25 (Wednesday, 11 a.m.) – Jon attended the County Ergonomics course last week and said he found it useful and will incorporate what he learned into his work. He said his interaction with Anne has improved and feels he can work well with her. However, he did say he still feels more comfortable with Bob. He says that Bob seems more receptive to having him around and explains what he's doing and why. He really appreciates Bob's time in training him and hopes he can continue to work with Bob. I said I would speak with Bob about being his mentor for the next three months and Jon was very appreciative of this suggestion.

9/20/25 (Thursday, 2 p.m.) – Bob has agreed to be Jon's mentor for the next three months. He's let me know that Jon's been helpful to him and his clients. However, he's observed that Jon's relationship with Anne is rather strained, which he personally witnessed before our unit meeting this morning. Prior to my arrival into the conference room, Bob observed Jon and Anne discussing transportation tomorrow for one of Anne's clients. Anne asked Jon if he could transport one of her clients tomorrow at 9:00 a.m. for a

doctor's appointment at 9:30 a.m. She explained to Jon that she had checked the schedule and it appeared that he was available. Jon told Anne that he couldn't help her because he was busy and then walked away from her. Bob said that Anne seemed surprised and somewhat offended by Jon's behavior. She knew that Bob was his mentor and told him after the unit meeting that she didn't appreciate Jon speaking to her in that manner. When I met with Jon for supervision, I told him that the incident had been reported to me and asked him what had happened with Anne this morning. He said he misread the schedule and could in fact take Anne's client to the doctor's appointment. Jon said he didn't mean to offend Anne in any way and would apologize to her immediately following our meeting. I told him that I expected him to treat everyone including coworkers, supervisors, managers, and clients in a professional and courteous manner at all times and can expect the same from others. He assured me that this incident wouldn't happen again.

10/3/25 (Wednesday, 10:30 a.m.) – Anne told me that Jon met with her on 9/20 regarding the incident that morning prior to the unit meeting. She said that he had apologized for offending her and promised it wouldn't happen again. He explained to her that he had misread the schedule and would transport her client to his appointment. She felt his apology was sincere and there have not been any further incidents. Anne said Jon's been available when she's requested his assistance. However, two of her clients have reported that he's late in picking them up and/or getting them to their appointments. I met with Jon and explained that two clients had complained about his tardiness. He said he's not familiar with the area and has tried to do his best. I told him he needs to review area maps, possibly using Google Maps or MapQuest. I advised him that he needs to allow sufficient time to get clients to/from their appointments, so our clients don't have to wait, which is discourteous, and/or arrive for appointments late, which reflects poorly on the department. He was assigned two new cases and needs to schedule initial appointments with each of them in the next two weeks.

10/12/25 (Friday, 8:30 a.m.) - I checked with Anne and Bob prior to my meeting with Jon and both report no complaints from their clients regarding Jon's tardiness. When I met with Jon for supervision today, he says he's getting more familiar with the area and prints online directions whenever he's making visits and/or transporting clients. I told him to keep up the good work I said I would enroll him in the County "Time Management" training course through the Learning Management System and he should expect to receive an email regarding his enrollment. Upon completion of that course, we will meet to discuss what he learned and how he could incorporate the information into his work.

10/26/25 (Friday, 11 a.m.) – Prior to our supervision meeting, I reviewed Jon's case files and have found some improvement. He's approximately one week behind on his progress notes. We reviewed each case and set up a schedule for completing his progress notes. I also told him I was preparing his three-month probationary performance evaluation and he'll be rating improvement needed overall. I told him I would provide him a draft evaluation in our next supervision which he will have the opportunity to review, provide me comments either verbally and/or in writing, and I will then finalize the draft for his review and signature which will be retained in his Civil Service and departmental personnel files.

10/31/25 (Wednesday, 9 a.m.) – I met with Jon for supervision. He's very worried about his three-month probationary evaluation and whether he's going to be dismissed. I told him I did have concerns regarding his performance but feel with more time, he can perform competently in all aspects of his job. I told him that we'll meet on a weekly basis to review his case files and progress notes. We created an action plan to address what he needs to complete and due dates for all assignments given.

11/13/25 (Tuesday, 10:30 p.m.) – I met with Jon regarding his pending assignments and provided him with a draft Performance Improvement Plan (PIP.) I explained that I had drafted this document to assist him in improving in specific areas specifically quality of work, quantity of work, and adaptability. He initially was not receptive to the constructive feedback I provided and became upset, slightly argumentative. I explained that it's being provided to assist him in meeting all aspects of his job. He apologized for his behavior and told me he's afraid he's letting me down and doesn't want to disappoint me. I told me I believe he's capable of being successful in this position. I explained again that I believe he needs more time, and this document should be a helpful reference for him. The PIP was revised incorporating information from our discussion; Jon signed and dated it today.

11/28/25 (Wednesday, 10 a.m.) – I met with Jon for supervision and explained that while I had seen some improvement, he was still behind on his progress notes. He explained he had underestimated a particular assignment which took him much longer than he expected. He admitted he has a difficult time with prioritizing his assignments and with his time management. He had three assignments due this week which he assured me he would complete. He told me he didn't know what to do so he decided to work on each of them but wasn't able to finish any. When I asked him why he hadn't told me earlier, especially since he missed the deadline for distributing the revised educational materials, he didn't know what to say. I explained that I expect him to keep me well informed regarding his pending projects. If he is uncertain about which projects to work on, he's expected to address it with me as soon as possible. Regarding the three pending projects, we could have adjusted the due dates for two of those assignments so he could have worked on the educational materials and met that deadline since it impacted others within the division. I also told him I would be enrolling him through LMS in the next County "Time Management" training course. Upon completion of the course, I expect him to review the handouts with me at the next supervision and discuss what he learned and how he could apply it the information to his work.

12/12/25 (Wednesday, 3 p.m.) – I met with Jon for supervision and provided him a copy of his draft performance evaluation, including the rating sheet and narrative citing specific examples. I explained that I had seen recent improvement in several areas, but he still needs to improve in meeting deadlines. In order to give him more time to improve his overall performance and for me to assess his performance, I advised him I requested that his probationary period be extended 520 hours (equivalent to three months of full-time service). I told him he would receive a letter from Employee Relations confirming that probation extension. We reviewed his case files for the past week and progress notes prepared. They were comprehensive and concise. I told him he was on the right track and to continue what he was doing. He was receptive to the feedback provided and said he would keep me posted if he needed further guidance. He said he would review the draft evaluation and provide written comment prior to our supervision next week so we could discuss it further.

[\[SEE SECTION 3 FOR MORE INFORMATION REGARDING PROBATIONARY PERIODS\]](#)

Example #3: “Special” Below Standard Evaluation

Supervisory Notes – Alice Doe file

Administrative Secretary III

[“SPECIAL” BELOW STANDARD EVALUATION]

1/8/25 (Monday, 9 a.m.) – I met with Alice who laterally transferred into the division from another division in our department. She’s been with the County for three years and received overall competent evaluations each year. We went over the list of expectations and resource materials, and assessed her ability regarding scheduling trainings/conferences, developing training schedules, keeping accurate sign-in rosters, developing flyers, etc. I encouraged her to take notes during our meetings to be retained in the resource binder provided. We reviewed her schedule: 9:00 a.m. to 6:00 p.m., 12:30 p.m.-1:30 p.m. lunch break.

1/24/25 (Wednesday, 9 a.m.) – Alice turned in a flyer announcing the “Workplace Violence Prevention” training. She did a good job on formatting, content (covered who/what/when/where.) We went over the distribution process together, and she took notes.

2/9/25 (Friday) – I received a call from Dave Jones (Manager of conference hotel); we’d spoken in the past regarding previous conferences. He explained he’d spoken to Alice about the pricing and room reservations for our upcoming conference. He said she seemed confused about what was needed which is why he’d asked so many questions. He’s interested in our business but doesn’t know what’s needed. After providing him with the details, he gave me the pricing information. Afterwards, I spoke with Alice regarding my conversation with Mr. Jones and provided her with the pricing information. She said she didn’t have her notes handy when she called him and apologized for any confusion she caused. We again discussed the need to prepare when making these calls as well as remaining professional.

2/12/25 (Monday, 10:00 a.m.) – Alice called in sick today.

2/13/25 (Tuesday, 9:30 a.m.) – I met with Alice regarding her unscheduled absence yesterday. I explained our department’s expectation that an employee needs to call in at least thirty minutes prior to their start time if they will be late or not coming to work. She said that wasn’t required of her in her last department and didn’t think she really had to call me by 8:30 a.m. but said she would. I reiterated the expectations, which may differ from her previous supervisors, and she agreed to would call me as required.

3/5– 3/9/25 Alice filled in for Stacy (the downstairs receptionist) and had some difficulties handling the front desk duties. She wasn’t sure how to handle the check-in process and incoming phone calls. She was reluctant to ask for assistance because she knows everyone is busy and didn’t want to bother anyone. I explained that it’s OK to ask for assistance. I suggested that she sit with Stacy for two days to see how she covers the front desk; that may help her on how to handle that desk. She was receptive to this suggestion. I then followed up with Stacy who is very willing to work with Alice.

3/19/25 (Monday) – Alice is very proficient at graphics – she has a good eye for color. Alice redesigned the cover of our upcoming Training Course Brochure to make it more attractive, and I complimented her on it.

4/2/25 (Monday, 10 a.m.) – The Training Course Brochure pages 1-10 that Alice turned in were error-free. However, pages 11-20 had eight spelling, three date/time, and two location errors. I brought those to Alice’s attention. She said she had forgotten to proofread and confirm the information before printing out the brochure. We discussed the importance of making sure the brochure has accurate information, as the entire department relies on it. Alice was receptive to my guidance.

4/16/25 (Monday) – Alice filled in for Stacy (the downstairs receptionist) again as it was Stacy’s flex day, and the check-in process went well. I complimented Alice on how she handled this assignment. She explained that sitting with Stacy was very helpful. She said she has difficulty in dealing with angry people on the phone. I recommended she enroll in the upcoming County training “Powerful Telephone Skills” through the online Learning Management System (LMS). Upon completion of the class, Alice will review the handouts with me in her next scheduled supervision and we’ll discuss what she learned and how she can incorporate it into her work.

4/17/25 (Tuesday, 11 a.m.) – At the end of our supervision today, Alice shared with me that she’s going through some personal difficulties. I asked if she needed to take any time off that would provide her support. I also reminded her of the County’s Employee Assistance Program. She appreciated my support and said she would consider utilizing EAP services.

5/2/25 (Wednesday, 3 p.m.) – I met with Alice to review her responsibilities regarding the summer interns we’ve hired. I let her know we would have two interns, one from June 4 to July 13, and the other from July 16 through August 31. She wanted to know if she was going to get paid for supervising the interns as she felt it was outside the scope of her responsibilities. I reviewed her job description with her and explained that these duties were within her scope of responsibilities. She said it had been a while since she directly supervised any interns and wasn’t sure how to approach it. I provided her with the training schedule I had prepared for the interns who worked in our department last year. While this schedule was used last year, I told her I wanted her to make it her own so if it needed to be revised and/or enhanced in any way, I was open to and welcomed her feedback. I asked her to provide me her comments in our next supervision which she agreed to do. I also recommended that she take the upcoming County “Introduction to Supervision” course since its being offered before our first intern starts his assignment next month.

5/17/25 (Thursday, 10 a.m.) – Alice and I met to review the training schedule for our summer interns. She also said the Intro to Supervision course was really helpful in enhancing the schedule. She told me she feels more confident and actually looking forward to the new responsibility. She provided me with thoughtful feedback both regarding the course as well as the training schedule and I complimented her on her extra efforts. I approved the revised training plan and advised her that if we found it to be effective, we would use it for future intern hires as well.

5/31/25 (Thursday, 10 a.m.) – I went over distribution of flyers with Alice again, as she couldn’t find her notes from the first time, we discussed it. She doesn’t appear to be organized with her notes, so I provided her several suggestions. She was receptive to the constructive feedback I provided.

6/12/25 (Tuesday, 10 a.m.) – Alice had reviewed the training catalog and requested to take the following courses: Intermediate Microsoft Outlook and MS Project Introduction. After reviewing the course descriptions, I told her I would approve the Microsoft Outlook course as it was applicable to her position, especially in sending group emails, reminder emails, and setting up numerous meetings. However, I could not approve the MS Project course at this time but would reconsider later this year. Alice was disappointed that I did not approve both courses and mentioned that she never had any problems signing up for courses with her previous supervisors. I again explained why I could not approve the MS Project class that included operational and staffing needs and would reconsider her request later this year.

6/29/25 (Friday, 10 a.m.) – Cindy (the upstairs receptionist) explained that she had asked Alice for the rosters for training classes being held today. Alice rushed past her and said she was busy looking for something. When Alice finished what she was doing, she returned to the reception area and told Cindy that she couldn't find the rosters but would continue looking for them. She apologized to Cindy for not having the information readily available. I located the rosters for Cindy as they were needed for the instructors. I then met with Alice about this situation and explained that she should have provided the rosters to Cindy before she left work yesterday, as we previously discussed. We reviewed this expectation during her initial training as well as in previous supervision meetings. She apologized for not being organized and said she struggles with her time management. I suggested she create a daily "To Do" List and provided her with a copy of what I use as a suggestion.

7/12/25 (Thursday) – Alice left me a message at 7:00 a.m. to say her son was sick today and she wouldn't be in today or tomorrow, 7/13. I called her at home at 9:00 a.m. and did not get any answer. I left her a message expressing my concern regarding her son's illness. I also requested that she bring in a doctor's note for this unscheduled absence. I told her to call me immediately and provided both my County extension and cell phone. Alice returned my phone call at 12:00 p.m. and said she couldn't come in and would meet with me on Monday.

7/16/25 (Monday, 10 a.m.) – I met with Alice to discuss her unscheduled absence. She said she did not take her son to the doctor last Thursday since he wasn't that ill. I explained that 1) it's crucial that she be reliable; it makes a big impact when she's not here and, 2) that her failure to comply with my request to provide the doctor's note was insubordinate and will not be tolerated. She initially became upset because she felt I was calling her a liar (that she/son weren't really sick) then calmed down and said she realized what I was saying.

7/31/25 (Tuesday, 10 a.m.) – Meredith (Division Manager) called me to say that Alice was very helpful to her when they attended the budget prep meeting. Meredith needed some last-minute adjustments made to her schedule and Alice was very efficient in making the changes. I let Alice know about Meredith's appreciation.

8/14/25 (Tuesday, 9 a.m.) – I asked Alice to call several local hotels to find out conference room rates. I mentioned that if we use a hotel as a training site, we can't use our caterer. I overheard her telling the hotels that we would be bringing in box lunches, which they said wouldn't be allowed. When I asked her about this, she said she thought it would be worth a try to inquire about it. I told her it makes us sound unprofessional to do so.

8/27/25 (Monday, 11 a.m.) – I asked Alice how many vans she had reserved to transport the 23 people scheduled for XYZ training on 9/5/25. Alice said, “I don’t know, I have it written down.” I explained that Public Works usually doesn’t have large vans, and that the drivers would need special licenses if we were going to get larger vehicles. Alice had only reserved two eight-person vans, so we called and were able to reserve another van last-minute.

9/5/25 (Wednesday, 9 a.m.) – Alice left the class rosters on Cindy’s desk before she left last night. It was discovered that she had listed the participants for the wrong classes causing confusion for the instructors this morning. I met with her to find out what happened and said she was disorganized yesterday. She worked on the TB Prevention Flyer yesterday, so she didn’t have as much time as usual to prepare the rosters. She said she prepared them in a hurry and didn’t proof them. I explained that she needs to be more careful with the rosters as it caused confusion for the instructors and reflected poorly on our department. I told her I didn’t expect this to reoccur.

9/17/25 (Monday, 2 p.m.) – I thanked Alice on her hard work this week – we were up against several deadlines, and she put forth a lot of effort in getting everything out in time. Alice said she was more interested in the graphic design aspects of the job rather than the conference logistics planning aspects. I explained that both are very important. I do 60% of the planning work and she does 60% of the design projects – but it’s crucial that she can do both of them well.

10/2/25 (Tuesday, 9:30 a.m.) – Alice came to me in a panic – she couldn’t find the final draft of TB Prevention flyer, and it needed to go to the Copy Center today for printing. We searched her desk area and eventually found it, as well as her original notes regarding distribution of flyers. I showed her my system for organizing my desk, and we discussed how she could better organize her work.

10/16/25 (Tuesday, 9 a.m.) – Alice called me over to look at how she has organized her workspace. She said the hard part for her will be to keep it going. I encouraged her to do so, as it makes life easier for both of us if we need to find something on her desk. There’s a County class offered on enhancing one’s organizational skills that she should take and told her I would enroll her through LMS in the next session.

11/1/25 (Thursday, 2 p.m.) – I told Alice that her annual performance evaluation was coming up in the next month. I explained I had concerns regarding her attendance and performance that would be addressed in her evaluation. I told her I would provide the draft evaluation to her in our next supervision. She could then provide me her comments either verbally and/or in writing within the following ten days. We could then meet to discuss further, and I would then prepare the final draft for her review and signature.

11/15/25 (Thursday, 3 p.m.) – I provided Alice with the draft evaluation which included the rating sheet and detailed narrative. I explained why I was rating her overall “improvement needed” and placing her on special 30-day performance evaluations for the next 3 months. She said she would review the draft and provide me her comments by our next meeting. I also provided Alice with the draft Performance Improvement Plan and asked her to review it and provide any comments to me. I explained that the PIP is intended to be a collaborative process between us, and I wanted to provide her assistance in being successful in this position. I advised her that I had made a job performance referral for her to the County’s Employee Assistance Program. She appreciated the referral and said she would call today for an appointment.

11/28/25 (Wednesday, 3 p.m.) – I met with Alice regarding her written comments to the draft evaluation. I explained I had considered her comments in good faith and made some revisions. I added the additional examples she had provided which further supported the ratings given. I said I would not remove the information regarding her unscheduled absences. She said she likely wouldn't sign the evaluation unless that information was removed. I told her not signing the final draft was her choice and I would note "Declined to Sign" on the final draft, date it, give her a copy and then process it as usual for the department. I also advised her she could write a rebuttal to the evaluation which would be attached and filed in her personnel files, both Civil Service and departmental.

3. PROBATIONARY PERIODS

The probationary period is the final phase in the examination process. The purpose of the probationary period is to allow the employer to make a determination regarding the employee's ability to perform at a satisfactory level in all aspects of the job and to conform to acceptable norms of conduct.

It is important to provide employees who are in their probationary period with expectations, training, guidance, and counseling to assist them in reaching and maintaining a successful level of performance. It is also important to closely monitor the performance and conduct of probationary employees so that a determination can be made regarding conversion to permanent status.

It is especially important for the supervisor to regularly meet with a probationary employee, ideally on a weekly or at least biweekly basis, for supervision. This gives both the supervisor and employee an opportunity to discuss the employee's work performance/conduct.

A. Who serves a probationary period?

Employees who are appointed to a classified position undergo a probationary period. Employees who promote, demote, or transfer to another department may also serve a new probationary period. Extra help, temporary, provisional, and unclassified employees DO NOT undergo a probationary period.

B. How long are probationary periods?

An employee's probationary period is made up of either 1040, 1560, 2080, or 3120 hours (equivalent to 6, 9, 12, or 18 months of full-time employment). The probationary period is calculated on the actual number of hours in a paid status. You can determine the length of the probationary period for a specific classification by accessing the job specification table database at <http://hr.smcgov.org/job-classification-table>

A probationary period is extended by any leave of absence, provided the leave exceeds ten working days, and is in full pay period increments. So, if an employee goes on a twenty working day leave of absence, their probationary period is extended by twenty days, or one hundred and sixty hours. Contact your Employee & Labor Relations representative so notification can be sent to the employee that their probationary period will be paused for the duration of their leave and resume upon their return to work.

C. What are your supervisory responsibilities during a probationary period?

You are responsible for communicating performance and conduct standards and expectations to the employee, monitoring their performance and conduct against those standards, and providing timely feedback to them. You are expected to meet with all employees you supervise. The frequency of these supervision meetings will depend upon each employee and your training program. When conduct and/or performance issues arise, you need to address any concerns with the employee in private and promptly. If corrective action (verbal counseling) does not result in an immediate and sustained improvement by the employee, you should consult with your manager and contact your Employee & Labor Relations representative for further guidance. In addition to ongoing verbal (and perhaps written) feedback, the probationary employee is expected to receive a performance evaluation at three months and subsequent evaluations depend upon the length of their probationary period. This is a formal, written performance evaluation based on the duties as described in the employee's classification description, and other instructions provided to the employee (i.e. departmental procedures, quantity/quality standards, etc.) An employee who is serving a six-month probationary period would receive one evaluation at three months of service and one as they approach six months.

D. Can a probationary period be extended?

Yes, a probationary period can be extended to a total maximum length of 2,080 hours (one year of full-time service). Probationary periods that are already established at 2,080 or 3,120 hours (12 or 18 months of full-time service) for the classification cannot be extended.

If a probationary employee is exhibiting conduct problems (e.g., discourtesy, has numerous unscheduled absences including tardies, misuses the Internet) the recommendation is usually probationary rejection rather than extending the probationary period. Extending a probationary employee's probationary period is more appropriate when there are performance-related concerns that may be overcome with a longer period of training and observation by the supervisor to assess the employee's performance.

In order to extend a probationary period, the department head or designee requests concurrence for such an extension from the Human Resources Director. The request should contain a basis for the extension.

Ideally, the Human Resources Director should receive these written requests at least two pay periods prior to the end of the employee's probationary period. Please be aware that you cannot extend the probationary period once the employee has worked the requisite hours for their specific classification.

The requests may be sent to the Human Resources Director via email to ensure quick delivery.

[See Sample Probationary Extension Request Letter #1](#)

[See Sample Probationary Extension Request Letter #2](#)

Following receipt of a request for extension, Employee & Labor Relations will write a letter to the employee (with a copy to the supervisor and manager) confirming the extension. **Before the employee receives this letter**, the manager is expected to personally advise the employee that their probationary period is being extended. The letter from Employee & Labor Relations should not be a surprise to the employee.

E. How does an employee become permanent?

The preferred way is for the supervisor to write a performance evaluation just prior to the end of the employee's probationary period, recommending that the employee be placed in a permanent status.

However, know that absent any action from the supervisor or manager to extend the employee's probationary period or reject them during probation, the employee will automatically become permanent upon completion of the prescribed probationary period.

F. How are employees notified that they have failed to pass their probationary period?

An employee is notified via a letter from the department head or designee, stating they are being rejected during their probationary period.

- If this is the initial probationary period for an employee, the employee leaves County employment. Typically, the probationary employee is given the option to change the probationary rejection to a resignation within a specified amount of time.
- If this probationary period is being served due to a promotion, demotion or transfer, the employee may be entitled to return to their former classification. If the employee has the right to return to a previous classification they held with the County, the letter will also state the date and position to which they should report. If this is the case, contact Employee & Labor Relations for assistance.
- Whether the employee submits a letter of resignation or verbally submits their resignation (i.e. phone message), the manager should provide the employee with a letter acknowledging and accepting that resignation.

[See Sample Rejection During Probationary Period Letter](#)

[See Sample Resignation Form](#)

[See Sample Acknowledgment & Acceptance Letter](#)

G. Can an employee transferring to another department be required to complete a new probationary period?

Section 12 of Civil Service Commission Rule XI provides that employees may transfer from one position to another in their same classification. This rule also states that employees who transfer to a position in the same classification, but into another department, may be required by the gaining department head to start a new probationary period. You should note that Section 12 of Rule XI also requires that, if a

new probationary period is required for a transfer, the employee must sign a statement on the [Request for Transfer or Voluntary Demotion Form](#) indicating an understanding that a new probationary period is in effect. This form is also signed by Human Resources and the gaining department, with a transfer date effective the first day of a pay period.

For the purposes of the Civil Service Commission Rules, entities such as County Health, Human Services Agency, and Sheriff's Office, for example, are considered to be separate departments. Thus, employees transferring to the same classification within a department (e.g. from Public Health, Policy & Planning to Behavioral Health and Recovery Services) cannot be required to start a new probationary period.

H. Can an employee grieve or appeal a probationary dismissal?

An employee cannot grieve a probationary rejection. An employee may appeal a probationary rejection to the Civil Service Commission only if they allege and substantiate in writing that the rejection was due to discrimination.

I. Can a probationary employee take vacation time?

The [County Ordinance Code](#) states: "No vacation will be permitted prior to the completion of 13 full pay periods of continuous service in any status." The American Federation of State, County and Municipal Employees (AFSCME) MOU states "No vacation will be permitted prior to the completion of thirteen (13) biweekly pay periods of service. Such service includes time in an extra-help status provided that there has not been a break in service..." Most of the other union contracts have language similar to the Ordinance Code.

We recommend vacation requests are evaluated on a case-by-case basis. The reason for this rule is to ensure that the supervisor can observe a new employee's performance during the full probationary period. If an employee is requesting to take a few days off throughout the year and they have a yearlong probationary period, this requested vacation time should not be significant enough to impact the supervisor's ability to evaluate the probationary employee's performance. Of course, if there is a special situation and a longer vacation is approved during probation, the department may always opt to extend the probation by the length of the vacation to provide a full probationary period and must advise the employee of this extension at the time the vacation request is approved.

However, if an employee has worked in an Extra Help status before accepting a permanent position, the supervisor has already reviewed the performance and conduct of the new employee. In this situation, based on the "continuous service" language and the intent of the language, a department may approve the vacation even if the employee is on probation. In circumstances where an employee who has worked in an Extra Help status but is selected for a permanent position which is different from the Extra Help classification, a department may decide not to approve a vacation.

Sample Request for Extension of Probationary Period #1

- PLEASE PLACE ON YOUR DEPARTMENTAL LETTERHEAD -

DATE

Rocio Kiryczun, Director
Human Resources Department
500 County Center, 4th Floor
Redwood City, CA 94063

RE: Extension of the probationary period of NAME

Dear Mrs. Kiryczun:

NAME is a CLASSIFICATION and is due to complete her six-month probationary period on approximately DATE. I have spoken with her regarding her productivity level and have informed her that I am recommending a [THREE-MONTH OR SIX-MONTH] extension to her probationary period. She is aware of the concerns and is anxious to remedy the situation.

I feel that NAME can do the work that is assigned her, but she needs some time to feel more confident in approaching the clients. I have seen an improvement recently that I believe will continue.

Sincerely,

MANAGER'S NAME
TITLE

cc: DEPARTMENT HEAD

Sample Request for Extension of Probationary Period #2

- PLEASE PLACE ON YOUR DEPARTMENTAL LETTERHEAD -

DATE

Rocio Kiryczun, Director
Human Resources Department
500 County Center, 4th Floor
Redwood City, CA 94063

RE: Probationary Period Extension – EMPLOYEE’S NAME

Dear Mrs. Kiryczun:

The above CLASSIFICATION will complete his nine-month probationary period on approximately DATE. NAME has experienced some difficulty in meeting his job expectations but has shown recent improvement. Because he has further room for improvement, however, I have informed him that I am recommending a three-month extension to his probationary period.

I am therefore requesting that his probationary period be extended in order to provide us with the necessary time to work with him and evaluate whether he can meet our expectations.

Sincerely,

MANAGER’S NAME
TITLE

cc: DEPARTMENT HEAD

Sample Termination Letter for Probationary Employee*

- PLEASE PLACE ON YOUR DEPARTMENTAL LETTERHEAD -

DATE

NAME

CLASSIFICATION

DEPARTMENT

Dear NAME:

Due to your unsatisfactory performance as a CLASSIFICATION, you are being rejected during your probationary period effective today, in accordance with Rule XI of the Civil Service Commission Rules.

You are being rejected (due to performance concerns, unsatisfactory attendance record, etc.)

If you prefer to resign, you may do so by providing me with written notice of such by 4:00 p.m. on NEXT DAY, and this probationary rejection will be changed to a resignation.

[Add if the employee is remote: As you are no longer a San Mateo County employee, you are also required to return all County property in your possession which include [INSERT ITEMS] by DATE.

Sincerely,

MANAGER’S NAME

TITLE

cc: DEPARTMENT HEAD
Rocio Kiryczun, Director, Human Resources Department
Civil Service Personnel File
Department Personnel File

* Before issuing this letter to an employee who is eligible to “bump back” into a previous position, please contact your Employee & Labor Relations representative.

Request for Transfer or Voluntary Demotion

- Available from your department Pay/Personnel team or Talent Acquisition Analyst.

Request for:

TRANSFER OR VOLUNTARY DEMOTION

Please see the other side for important information

I. TO: Director of Human Resources Department

I, _____, have requested Transfer Voluntary Demotion from my position
EMPLOYEE'S NAME

of _____ in _____
CLASSIFICATION DEPARTMENT

to _____ in _____
CLASSIFICATION DEPARTMENT

The reason for Transfer Voluntary Demotion: _____

EMPLOYEE'S SIGNATURE _____
DATE

II. Action by Gaining Organization: APPROVED DISAPPROVED

Proposed Transfer Voluntary Demotion Date*: _____
**Effective the first day of a pay period*

New Probationary Period is is not required. If required, employee must sign Section III.
(Please contact Employee Relations with questions regarding probationary period.)

APPOINTING AUTHORITY'S SIGNATURE _____
DATE

III. Probationary Period Statement (Complete only if new probationary period is required.)

I understand that I will be required to undergo a new probationary period of _____ (length) hours
as a condition of this Transfer Voluntary Demotion.

EMPLOYEE'S SIGNATURE _____
DATE

IV. Action by Department of Human Resources Dept: APPROVED DISAPPROVED

Effective date* of Transfer Voluntary Demotion: _____
**Effective the first day of a pay period*

HUMAN RESOURCES DEPT DIRECTOR'S SIGNATURE _____
DATE

Date Losing Organization Notified: _____

HRXXFr02 Transfer or Voluntary Demotion Request Form 082806 7/16/2012) Note: The completed form will be filed in the Civil Service personnel fi

TRANSFER OR VOLUNTARY DEMOTION

Human Resources Department

455 County Center

Redwood City, CA 94063

Pony HRD-121

Telephone: (650) 363-4343

General Information

- Employees may take a voluntary demotion to any job classification that has a top salary step that is lower than the top salary step for their current classification and for which they meet the minimum qualifications including any certification or licensure.

- Employees may transfer in one of the following ways:

From a Position in one Job Classification to the Same Job Classification in a Different Department. For example, an employee can transfer from an Office Assistant in Planning to an Office Assistant in Mental Health.

Movement in the same classification or classification series within a department is a reassignment, not a transfer (for example, from an Office Assistant in Public Health to an Office Assistant in Aging and Adult Services or from a Fiscal Office Assistant in Agriculture to Fiscal Office Assistant in Parks and Recreation).

From a Position in one Job Classification to a Different Job Classification in the Same or a Different Department within Specific Groupings. Employees may transfer from one class to another class in any of the following groups of classifications:

- Data Entry Operator I/II, Deputy Court Clerk I/II, Fiscal Office Assistant I/II, Legal Office Assistant I/II, Legal Word Processor Operator, Medical Office Assistant I/II, Medical Unit Assistant, Medical Word Processor, Office Assistant I/II, Patient Services Assistant I/II, Sheriff's Criminal Records Technician I/II, and Word Processing Operator I/II.
- Auditor-Appraiser I/II, Appraiser I/II, Real Property Agent I/II/III.
- Library Assistant I/II and Library Technician I/II.
- Certified Nursing Technician and Medical Services Assistant II.
- Occupational Therapist I/II and Occupational Therapist - PHC I/II.
- Physical Therapist I/II and Physical Therapist - PHC I/II.
- Deputy Public Guardian-Conservator I/II/III, Family Court Counselor, Marriage, Family and Child Counselor I/II, Psychiatric Social Worker I/II, Social Worker I/II/III, and Vocational Rehabilitation Counselor I/II/III.
- District Coordinator - OES, Environmental Health Specialist I/II, and Hazardous Materials Specialist I/II.
- Benefits Analyst I/II and Family Support Officer I/II.
- Group Supervisor I/II and Shelter Care Counselor I/II.
- Property Transfer Assistant I/II, Recordable Documents Indexer I/II and Recordable Documents Examiner I/II.
- Paralegal, Legal Secretary I/II, Administrative Secretary I, Administrative Secretary II and Administrative Secretary III.
- Housing and Community Development Specialist I/II/III and Planner I/II/III.
- Park Ranger I/II and Gardener.
- Internal Auditor I/II and Accountant I/II.
- Associate Systems Engineer and Information Technology Technician.
- Systems Engineer and Information Technology Analyst.
- Executive Secretary and Executive Assistant.

For example, an employee may transfer from an Office Assistant position in Public Health to a Fiscal Office Assistant position in Aging and Adult Services or from a Data Entry Operator position in Agriculture to a Fiscal Office Assistant position in Parks and Recreation.

- All transfers must be listed on the County Job Transfer line in order to be filled as a Transfer.

HRXxFr02 Transfer or Voluntary Demotion Request Form 082806 7/16/2012) **Note:** The completed form will be filed in the Civil Service personnel file

Sample Resignation Form

- PLEASE PLACE ON YOUR DEPARTMENTAL LETTERHEAD -

Resignation of Employment

This will document NAME’s decision to resign from HIS/HER probationary position of CLASSIFICATION effective DATE. The DEPARTMENT NAME accepts NAME’s voluntary resignation effective that date.

NAME has turned in all County property, identification, and equipment that is in HIS/HER possession.

NAME

MANAGER’S NAME

CLASSIFICATION

TITLE

Date: _____

Date: _____

- cc. DEPARTMENT HEAD
Rocio Kiryczun, Director, Human Resources Department
Civil Service Personnel File
Department Personnel File

Sample Acknowledgment and Acceptance Letter

- PLEASE PLACE ON YOUR DEPARTMENTAL LETTERHEAD -

DATE:

EMPLOYEE'S NAME
HOME STREET ADDRESS
CITY, STATE ZIP CODE

Dear NAME:

This letter will acknowledge the department's receipt and acceptance of your resignation effective DATE. I want to thank you for your [years of] service with the San Mateo County DEPARTMENT NAME and wish you luck in all of your future endeavors.

Sincerely,

MANAGER'S NAME

TITLE

cc. DEPARTMENT HEAD
Rocio Kiryczun, Director, Human Resources Department
Civil Service Personnel File
Department Personnel File

4. INTRODUCTION TO PERFORMANCE AND CONDUCT

Employee expectations fall into two categories – Performance and Conduct.

Performance :

- Expectations related to the employee’s job classification or job assignment. They include the quantity, quality, accuracy, and timeliness of work products.

Conduct:

- Expectations are work rules that relate to employee behavior. Examples include adhering to work hours, proper use and reporting of time, honesty, proper interactions with clients and coworkers, etc.

There are times when performance and conduct expectations "cross paths". For example, a receptionist who is frequently tardy (conduct) may also be failing to meet a performance standard to unlock the office and prepare for the public (performance). [Section 6: Performance](#) deals more specifically with what performance expectations are, and how the supervisor communicates and uses them in the evaluation process. [Section 7: Conduct](#) provides further information on conduct expectations.

A. What is the difference between performance and conduct?

In general, performance relates to the quantity, quality, accuracy, and timeliness of work products. Conduct issues relate to compliance with work rules. Performance problems usually involve a “can’t do” issue while conduct problems generally involve a “won’t do” or “should not have done” issue. For example, if an employee is making too many errors in work products, it is usually because they lack the training, ability, or experience to properly perform the work (can’t do) and may need additional training or coaching.

Conversely, if an employee is frequently late or absent (won’t do), it is usually not because they lack the training, ability, or experience to report to work. Counseling and corrective action, rather than training, is usually appropriate.

B. Why do we make a distinction between performance and conduct?

Conduct and performance are handled differently in terms of the corrective action process. You should always contact Employee & Labor Relations when there is any question about the appropriate corrective action process to follow.

Again, if you are addressing conduct issues with a probationary employee that has not resulted in overall improvement, you should consult with your manager and contact your Employee & Labor Relations representative about rejecting the employee during their probationary period.

Corrective Action and Disciplinary Action

Corrective action and disciplinary action are two terms that you will encounter in dealing with performance and conduct issues. Although corrective action may lead to discipline, they are not the same.

C. What is corrective action?

Corrective action is the process the supervisor begins when an employee's performance or conduct is first identified as needing improvement. Normally, the first step in corrective action is bringing the issue to the employee's attention (counseling) and suggesting ways to "correct" the problem (corrective action plan). This first step is informal and may or may not result in a memo confirming the counseling. However, if a written memo confirming the counseling is not issued to the employee, the supervisor should still retain some written evidence that the counseling session occurred (e.g., a note in the supervisory drop file).

Examples of informal "corrective action plans" you may suggest in these initial discussions for performance problems might be:

- proofread your documents before submission
- review procedures daily
- attend training class in computer software programs such as Microsoft Word and Excel

Examples of informal "corrective action plans" for conduct problems might be:

- Attend a training class on Conflict Resolution
- Review the department policies on maintaining confidentiality to ensure understanding of expectations.

The intent of corrective action is to assist employees in correcting their performance and/or conduct to meet expectations. Corrective action includes verbal counseling, written counseling memos, corrective action plans, letters of warning, leave restriction letters, and letters of reprimand. For performance problems, performance evaluations may also be considered corrective action.

D. What is disciplinary action?

Disciplinary action is taken when corrective action has not caused the employee to correct their performance or conduct to an acceptable level. Disciplinary action may be taken without prior corrective action when an employee's performance or conduct is so egregious or serious (e.g. criminal offense, workplace violence) that informal corrective action is not an appropriate response. Disciplinary action includes suspensions/non-punitive discipline, temporary reductions in step, demotions, and dismissals. Disciplinary actions are discussed in more detail in both [Section 7: Conduct](#) and in [Section 5: The Skelly Process](#).

E. What is non-punitive discipline?

Non-punitive discipline is a program that replaces unpaid suspensions with a disciplinary letter that equates to a suspension, thereby establishing that there has been previous discipline if misconduct occurs again. Positive aspects of non-punitive discipline from management's perspective are that the employee does not actually leave the workplace, thereby avoiding the disruption to workflow and cost to fill in behind the employee. Positive aspects from the employee's perspective are that no money is lost, and, in some cases, the "rehabilitation plan" which, if successfully completed, results in removal of the disciplinary letter within a specific period of time.

[See Section 7: Conduct for a complete description of the program](#)

[See Section 5: Skelly Process](#)

[See Section 6: Performance for Sample Performance Improvement Plans](#)

[See Section 7: Conduct for Sample Letters](#)

All County employees are covered by the Non-Punitive Discipline Program. The Sheriff's Office reserves the right to issue actual suspensions, rather than non-punitive disciplinary actions, as circumstances warrant.

Is It Performance or Conduct?

BEHAVIOR	CATEGORY
An employee won't perform an assignment.	Conduct
An employee can't perform an assignment.	Performance
An employee is constantly late.	Conduct
An employee is not meeting a numeric quota of productivity.	Performance
An employee was rude to a coworker/customer.	Conduct
An employee's work has frequent mistakes in it.	Performance
An employee has a "bad attitude."	Neither – Managers must identify observable behavior.

5. THE SKELLY PROCESS

Background

The Skelly decision (Skelly vs. California Personnel Board) determined that a permanent public employee has a property interest in their job, which is protected by "due process," entitling them to a hearing prior to discipline. In this context, discipline includes suspensions, non-punitive suspensions, temporary reduction in step, demotions, and dismissals. The "Skelly Process" is the mechanism for providing this required due process. The Skelly court concluded that, at a minimum, the due process afforded to these employees and safeguards must include:

- 1 Notice of the proposed action;
- 2 The reasons for the proposed action;
- 3 A copy of the charges and materials upon which the action is based (material relied on); and
- 4 The right to respond, orally and/or in writing, to the authority imposing discipline.

[Section 6: Performance](#) and [Section 7: Conduct](#) also have sample Skelly Intent and Decision Letters. The Employee & Labor Relations Division will assist you in all aspects of this process. Managers are strongly encouraged to consult with their Employee & Labor Relations representative prior to proposing disciplinary action.

Requirements (1) and (2) above are met by issuing an Intent Letter to the employee. This letter notifies the employee of the proposed action and states the reasons for the proposed action.

Requirement (3) is met by notifying the employee, in the Skelly Intent Letter that "All written materials, reports, and documents upon which this action is based are attached. "

Requirement (4) is met by affording the employee an opportunity to present his/her side of the incident(s) before a reasonably impartial and non-involved reviewer. This reviewer must be a person with authority either to make the final decision on the proposed action or to recommend what that final decision should be. This hearing, if requested, must be held prior to issuance of the Decision Letter, and the Decision Letter should address issues raised in the hearing.

Procedures for the Skelly Process

- 1 Prior to initiating any disciplinary action, the supervisor and/or manager will conduct investigatory interviews with the employee and any witnesses to determine the facts involved.
- 2 Should the above interviews indicate that discipline is warranted, the Skelly Intent Letter will be written and signed by a manager who has reviewed the facts and supports the proposed discipline.
- 3 A Skelly officer will be appointed to hear the employee's response. The Skelly officer can be the Department Head, the Assistant Department Head, or any other manager not involved in the decision to issue the Skelly Intent Letter. This same reviewer would also consider any written statement submitted by the employee.
- 4 Following the above hearing, the Skelly officer will make a recommendation to the Department Head or designee to either sustain the discipline proposed in the Skelly Intent Letter, impose a lesser discipline, or impose no discipline at all. This recommendation, and the decision of the Department Head or designee, must be based on: 1) the information contained in the Skelly Intent Letter and the associated materials relied on; 2) the information provided in the employee's written response; and 3) the information provided in the hearing.
- 5 The Department Head or designee will decide what, if any, disciplinary action to impose. If the decision is to impose discipline, the Department Head or designee will issue a Decision Letter. Note that this letter should also address issues raised by the employee in the hearing. If an employee with pending disciplinary action against them is represented by AFSCME or SEIU at the Skelly hearing, the applicable union will be sent a copy of the Decision Letter, if one is issued.

You have been assigned to be a Skelly Hearing Officer...

Your role is to listen to the employee and ask clarifying questions in order to get the full story from their perspective. This gives the employee an opportunity to explain things such as: what they did and why; to deny allegations they believe are false or distorted; to raise mitigating factors; and to possibly “fall on the sword”. You are not there to defend the proposed disciplinary action, the Department, or any particular individuals involved.

Introductions

- Name, title
- Explain you are here to listen to what the employee has to say about the events and make a recommendation to the decision maker regarding the proposed disciplinary action

Questions you may be asked:

What information/material have you already seen?

I was provided with the Intent Letter as well as the materials relied on.

When are you going to meet with the decision maker?

I plan to review the information you provide me and discuss with the decision maker as soon as possible.

Are you going to make a recommendation to the decision maker?

If I believe something needs further investigation, I'll look into those issues. If I form any opinions regarding what is said today, I'll share them with the decision maker.

Don't you think...(it's wrong to retaliate against someone) (there hasn't been progressive discipline here) (a lower level of corrective or disciplinary action would be more appropriate)...?

Either turn their question into a question of your own: **Explain to me how this would resolve the conduct concerns?**

Or respond with something like: **It's not my role here to determine if there was enough prior progressive discipline, but I will pass that concern of yours to the decision maker.**

Common issues that arise:

- If the Union brings up allegations that are not associated with this disciplinary letter, you can ask how those concerns related to this disciplinary letter. Redirect them- the purpose of this meeting is to hear information about this disciplinary letter, but if they have concerns about other situations, they should discuss them with their supervisor.

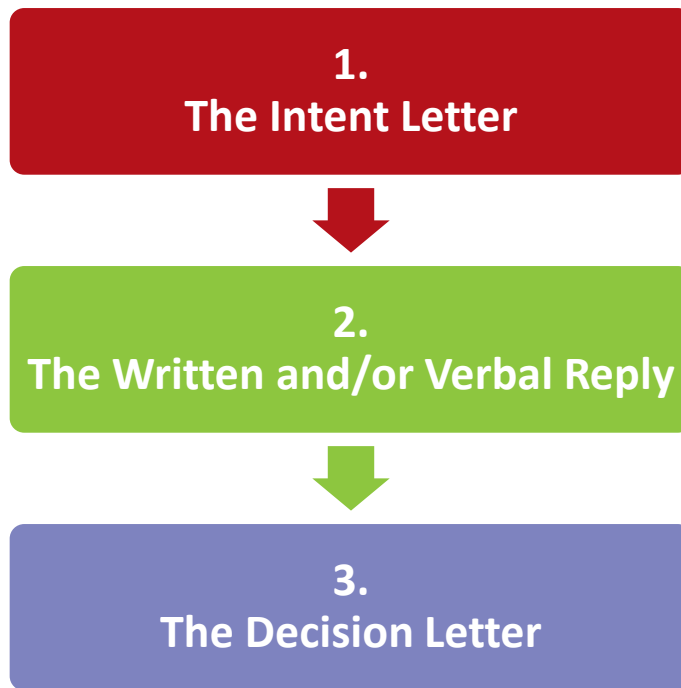
- If the employee says they have witnesses to any of the incidents who would back up their version of what happened, get NAMES (write them down) and what the employee thinks they saw/heard.

If the employee acknowledges their mistakes, ask them, “what would you do differently next time?”

Conclusion:

- Take a last look over the Intent Letter and your notes and ask any final questions. If the employee didn’t give you anything in writing, ask them if they are planning on doing that by the Skelly deadline.
- If the Union wants to discuss a “deal” like a lower level of disciplinary action, get their offer (verbal is okay) and pass that along to the decision maker.

The Skelly process has three distinct steps:



A. 3 Phases of the Skelly Process

1. The Intent Letter

What is it?

This Skelly letter informs the employee of the intent to take a disciplinary action. It sets forth the proposed discipline, the Civil Service Rule(s) that the employee violated, and the facts upon which the charges are based. Please refer to Civil Service Rule XIII, Section 4 at <https://www.smcgov.org/media/99411/download?inline=>

The Intent Letter also advises the employee of the right to review any documents upon which the proposed disciplinary action is based (material relied on), and of the right to reply to the charges verbally, in writing, or both. There is a specified time frame by which the employee can invoke the right to reply; it is generally within seven calendar days from the date the Intent Letter is issued. If the employee is represented, the letter also advises them of the right to union representation.

In the next to last paragraph of this Skelly Intent Letter, you advise the employee that "All written materials, reports, and documents upon which this action is based are attached." These "materials, reports, and documents" are referred to as the "materials relied on" and usually consist of counseling notes, written complaints from customers or coworkers, attendance records, interview notes, and other documentation.

The material relied on is the evidence upon which you are basing the proposed discipline, and no other material may subsequently be introduced to support the disciplinary action (unless a revised Skelly Intent Letter is issued to supersede the first).

Since the material relied on constitutes the evidence upon which you are proposing discipline, it is reasonable to expect that this material is in your possession and is readily accessed. In some instances, however, the material has not been available and long delays have occurred in providing it the Skelly meeting must be postponed allowing the employee/union time to review the material in preparation for the meeting. This delay results in a parallel delay in making a decision regarding the proposed disciplinary action.

Of more significance, the fact that the material relied upon is not available leads to the conclusion that this material was not relied on at all but was assembled after the fact to support a decision that had already been made. This is not the kind of message we want to send to employees.

To ensure you are prepared for material relied on, you should follow these steps:

1. Conduct a thorough, unbiased investigation of the incident(s)
2. Interview the employee(s) involved to hear their side of the story and take detailed notes
3. Interview any witnesses and take detailed notes

4. Assemble all documents, including notes from your interviews of the employee(s) and witnesses, into a file

It may be necessary to redact confidential material prior to it being released to the employee or their union representative to protect the identity of individuals or confidential information. This requirement usually involves the release of medical or law enforcement information that can be tied to individual persons, or of personnel records for employees other than the individual being disciplined. Any questions relating to disclosure of information should be referred to your Employee & Labor Relations representative.

Who does it?

Although the information upon which a disciplinary action is based usually comes from the employee's direct supervisor, the Intent Letter must be signed by a manager. Normally the first level of management above the employee for whom the discipline is proposed signs the Intent Letter. Since the employee has the right to reply to the deciding official or their designee prior to the deciding official making a determination about whether to sustain the proposed action, the Intent Letter should never be signed by the department head (unless the employee works directly for the department head).

Note: Counseling/confirmation letters, letters of warning, letters of reprimand, and other forms of corrective action are normally issued directly by the supervisor.

How?

Prior to initiating disciplinary action, contact Employee & Labor Relations for guidance on drafting the letter and on determining the appropriate level of action to propose. Once it is decided to propose disciplinary action, the signed Intent Letter is delivered to the employee. Whenever possible, the letter should be hand-delivered rather than mailed to the employee. In these instances, the individual who delivers the letter to the employee should annotate a copy of the letter indicating the date and time the letter was given to the employee and sign their name. If the employee is absent without leave or otherwise not available to receive the letter personally, it should be mailed to their home address by both regular and certified mail. The individual placing the envelope in the mail should annotate a copy of the letter indicating the date and time it was placed in the mail and sign their name.

Copies of the Intent Letter should be sent to the Department Head, the hearing official (if not the Department Head), the Human Resources Director, Employee & Labor Relations as well as filed in the employee's Civil Service and departmental personnel files.

2. The Employee's Reply

What is it?

An employee is given the opportunity to reply, either verbally, in writing, or both, to the charges made in the Intent Letter. This reply is the employee's chance to provide any additional information they want considered or any mitigating information they feel is important for the decision maker to know before a decision is made regarding the proposed discipline. In the reply, the employee may deny the charges, may explain mitigating circumstances, or may argue that the proposed discipline is not at the appropriate level. The employee may have a representative at this meeting. When giving the employee dates to reply verbally or in writing, give the employee seven calendar days to schedule a hearing. Give the employee ten calendar days from the date of the letter for (1) the hearing to take place and (2) the employee to provide a written response.

For non-punitive disciplinary actions, the Skelly process also affords the employee the opportunity to enter into a "Rehabilitation Plan." This process is described in [Section 7: Conduct](#).

Who does it?

The individual who reviews the written reply and/or hears the oral reply must be someone who has not made up their mind about the case. This does not mean that the hearing official cannot know anything about the case. It does mean that they must not have already decided that the employee is guilty of the charges and must not have already decided that the proposed level of discipline is appropriate. The hearing official can be the same individual who will make the decision to take or not take the proposed discipline, or the deciding official can ask someone else to hear the employee's reply and make a recommendation. If the responsibility of hearing the reply is delegated to someone other than the deciding official, that individual must be in a position to make an independent recommendation to the deciding official (they cannot work for the individual who proposed the discipline.)

How?

In the written or oral reply, the employee responds to the charges and facts contained in the Skelly Intent Letter. The employee may question the factual accuracy of the charges, may raise issues of inconsistency with other similar cases, or may raise mitigating circumstances which they feel explain or excuse their actions. An employee may also acknowledge the accuracy of the charges but argue that a lower form of discipline is appropriate.

The deciding official must consider the issues raised in the employee's reply. The deciding official may need to further investigate the matter; for example, if new information is brought to light. The deciding official may also consider the individual's demeanor at the hearing, considering such factors as sincerity, remorse, and the employee's acknowledgement or failure to acknowledge their responsibility in the matter. The deciding official then makes a determination to sustain, mitigate, or overturn the proposed discipline.

If the responsibility of hearing the reply has been designated, that individual considers all of the above factors and then makes a recommendation to the deciding official to sustain, mitigate, or overturn the proposed discipline.

3. The Decision Letter

What is it?

A letter notifying the employee that disciplinary action is being taken. The letter states the level and effective date of the discipline being taken. The letter also repeats the charges and facts laid out in the Intent Letter, with any revisions in charges/facts resulting from the Skelly Hearing.

Who does it?

The decision letter is signed and issued by a level of management above the manager who signed the intent letter.

How?

The decision letter should be hand-delivered to the employee. The manager should annotate a copy of the letter indicating the date and time the letter was given to the employee. If the employee is absent without leave or otherwise not available to receive the letter personally, it should be mailed to their home address by both regular and certified mail. It is essential that there be a clear record of the date the decision letter was issued in order to determine if a subsequent appeal or grievance is timely.

The decision may be to sustain, overturn, or mitigate (reduce to a lower form of discipline) the proposed action based on the oral/written reply, or based on the deciding official's considerations. The deciding official can lessen or overturn the proposed discipline, but they cannot impose a higher level of discipline.

Copies of the Decision Letter should be sent to the Department Head, the Human Resources Director, Employee & Labor Relations, the Civil Service Personnel File, and the Departmental Personnel File.

In addition, if an employee is represented by either AFSCME or SEIU at the pre-disciplinary meeting (Skelly Hearing), a copy of the Decision Letter shall be provided to the union representative.

6. PERFORMANCE

Preparing evaluations is only a small part of the employee performance process. It is essential that supervisors and managers meet with their employees regularly to discuss expectations, new assignments and work performance. Supervisors should take notes during these discussions and maintain those notes in individual files for each employee. These notes should be supplemented by copies of work products and memos from customers that point out strengths or areas needing improvement. Of course, such work products and memos should be discussed with the employee during the regular meetings.

When the employee's evaluation is due, a complete and accurate record of the entire year is available and, if the discussions have been documented, there should be no issue of the employee being surprised when an issue is noted in the performance evaluation. Consistent attention to the employee's performance allows positive reinforcement of desired work habits and early identification and correction of unacceptable work habits and performance problems.

Again, if you are addressing performance issues with a probationary employee and feel their performance will improve with more training and need more time to assess their performance, you should consult with your manager and contact your Employee & Labor representative about extending the employee's probationary period. **The Human Resources Director should receive the written request to extend probation at least two pay periods prior to the end of the employee's probationary period. Remember, you cannot extend the probationary period once the employee has worked the requisite hours for their specific classification.**

A. What is the supervisor's responsibility regarding employee performance?

First, clearly communicate your expectations. These expectations may include written performance standards for the position, as well as specific objectives for the individual employee. If formal, written performance standards have not been developed for the position, you may want to discuss developing such standards with your manager. You may also want to give the employee their job specification, any department specific job description which has been developed, departmental handbooks, state and federal guidelines, etc. Following this initial discussion, your responsibilities are to:

- Discuss specific objectives, due dates, timeliness, and quality and quantity standards in one-on-one conversations and in group meetings with employees and confirm specific objectives in writing prior to the beginning of each review period.
- Meet with individual employees regularly to discuss their progress, both positive and negative.
- Counsel when minor performance concerns come to your attention.
- Prepare written evaluations every three months for probationary employees, and on an annual basis for all other employees. Please see [Sample Performance Evaluation](#).

B. What are performance expectations?

Performance expectations are the standards for the position and the objectives for the individual employee, which need to be clearly communicated to employees. Expectations often have two aspects:

1. The quantity or timeliness of work products, and
2. The quality or accuracy of those products. A Standard is what you measure an employee against, i.e., "observes handbook for processing of all requests" or "writes and communicates messages and requests for services clearly." An Objective is a specific goal, i.e., "prepares 60 documents per hour" or "install five software packages by December 1, 2025".

[see Sample Performance Objectives for examples of objectives for the individual employee.](#)

Sample Performance Objectives

Employee & Labor Relations Analyst

1. Develop and conduct a three-hour training on Corrective Action and Progressive Discipline and present to at least two departments by 6/30/25.
2. On a quarterly basis, provide the number of participants who attended your Countywide and customized trainings.

Computer Programmer

1. Survey your customers for recommended changes to program X by DATE.
2. Outline your plan to upgrade program X by DATE.
3. Write and test program by DATE.
4. Provide data requirements to customers by DATE, requesting input by DATE.
5. Implement new program and provide procedural instructions to customers by DATE.

Revenue Collector

1. As a monthly average, contact at least 150 accounts per day.
2. Category X cases will be in inventory for no more than 5 days before a first call is made.
3. Cases over \$5,000.00 and thirty days in arrears will have a lien filed within two days of first contact.

Legal Office Specialist

1. Process documents within one day of receipt
2. Complete phases one and two of assigned project by January 15
3. Enter all new cases in the computer system within 24 hours of receipt

This communication should be in writing, and the employee and the manager should discuss any areas of the expectations that are unclear or changed from any previous expectations. When an employee is new on the job or has their expectations amended, a new copy should be given to the employee.

Performance evaluations must be done on an annual basis in order to ensure that the employee is fully informed of his or her progress and establish areas of increased emphasis. In addition to the yearly performance appraisal preparation, the manager should have documentation throughout the appraisal period that brings to the employee's attention their positive accomplishments, as well as any concerns that must be addressed to keep performance at an acceptable level. Annual performance evaluations are also addressed in the [County Manager's Administrative Memorandum E-13](#), dated January 24, 1996.

Counseling is the beginning of this process. However, the supervisor should always write notes or a memo confirming conversations with employees in order for the information to be usable in any resultant written evaluation. Throughout the process of informing the employee of deficiencies, the supervisor's role, along with the manager, is to assist in improving performance, not only by bringing it to her or his attention, but by providing on-the-job training, consistent and frequent assistance, and by supporting the employee's efforts through written communication.

[Please see Sample Performance Improvement Plans.](#)

When the supervisor has documented a pattern of clearly deficient performance that has failed to be corrected through the above process, a Special Review should be done, even though the employee's annual performance evaluation is not due. Always confer with your manager and your Employee & Labor Relations Representative. It is vitally important to be consistent in your treatment of all employees. Interaction with management and Employee & Labor Relations will ensure your objectivity and the supportability of your final determination.

In the Special Review, two things are accomplished:

- a. Receiving written confirmation of the deficient performance places the employee on notice that an action may result, if necessary, improvement is not made. Although the Special Review process continues to offer the employee an opportunity to improve, it is important to inform the employee of the potential for demotion or dismissal if improvement is not made. This is not done to threaten the employee but to make the employee fully aware of the result of failure on their part to improve. This appraisal should be given to the employee in draft, and the employee should be informed that the evaluation will not become finalized until 10 days after. A final copy should be provided to the employee on the eleventh day.
- b. Specific objectives for the next 30-60 day period are set that should be more focused than the general objectives and standards. The employee should be able to meet them in the 30-60 day period or be given a description of what part of a project should be accomplished in that period.

Any response given by an employee to the Special Review should be reviewed. It is important to consider the employee's comments in good faith; otherwise, it can appear that you have "made up your mind" and are not open to the employee's feedback and concerns. Your consideration can be to

incorporate some of the employee's comments into the final evaluation, or to state that their comments were considered but did not change the factual information already contained on the performance evaluation.

Follow up on the process as carefully as possible, giving subsequent evaluations every 30-60 days. This Special Review process must be continued until the employee either receives a standard rating or is demoted or dismissed. This cycle normally does not extend beyond three Special Reviews; each case however is reviewed on an individual basis.

The evaluations given during the Special Review cycle do not require that you give the employee 10 working days (two weeks) to respond to a draft. Since you are working closely with the employee on a very specific set of objectives over a short period of time, your interaction with the employee will allow the employee and yourself to discuss any concerns/objections.

A manager's active review of subordinate supervisors will ensure that supervisors are communicating standards and monitoring performance on a regular basis. The same monitoring and counseling done with individual employees by the supervisor is also a part of the manager/supervisor relationship.

Sample Performance Improvement Plan #1

On DATE, we met to discuss your performance in the position of X. In that meeting, I brought to your attention my concerns regarding your recent workload review, where I found that documents were frequently sent out with typographical errors, and were often not timely, based on the incoming request.

You indicated that you were using the spell check and could not understand why errors continued to appear in your typed reports, and that there were many features that would help you work more efficiently, but you had not been trained to use them. You also stated that you type the same letter several times, with only minor changes, and that this takes up a lot of your computer time.

You also stated that you were not able to mail all your correspondence on time because there were too many interruptions at your desk at the end of the day.

I indicated to you that spell check will not catch words that are spelled correctly but are not correct in the sentence (i.e., fund rather than found and forged rather than forget) and that you must proofread your documents prior to sending them out.

PERFORMANCE IMPROVEMENT PLAN

Spend one hour each week using the Microsoft Word tutorial program.

Attend the next macros and advanced procedures class.

Streamline desk procedures to allow two mail pickups per day (i.e., get UPS stickers, and prepare envelopes in advance during down periods).

I will further provide assistance as follows:

- Provide a telephone back up for you for one half hour in the morning and one-half hour in the afternoon so that two mail deliveries can be made from our office during the course of the business day instead of mailing everything the next morning.
- Approve your request to develop standard boilerplate in the instances you mentioned, so that typing errors can be minimized, and productivity increased.

I will meet with you on Friday mornings for the next 30 days to discuss your progress.

I am fully confident of your ability to improve, and I thank you for bringing your concerns and suggestions for improvement to my attention. I look forward to working with you to implement our ideas.

Sample Performance Improvement Plan #2

EMPLOYEE NAME’S Performance Improvement Plan

Jointly developed by (Employee’s Name) & (Supervisor’s Name) on (DATE). Improvement in these areas will lead to meeting all of the expectations of a(n) CLASSIFICATION. When that is accomplished, “stretch” opportunities can be offered.

Areas for Improvement	Performance Improvement Plan
Quality of Work	Think: “Am I doing this the most efficient way possible?” Work smarter, not harder, to reduce the time spent on less critical issues. Proofread written documentation (i.e. emails, memos, letters) for clarity, errors and/or omissions prior to submission.
Quantity of Work	Set timelines for tasks (milestones, deadlines) and track progress. Submit weekly status report for each project to manager for review and discussion.
Adaptability	Systematically consider all available facts before solving the problem. Make a work plan for complex tasks to include: Who to speak with, What will be needed, How best to approach it, Likely obstacles to be encountered.
Work Habits	Balance time on tasks/projects so they can be completed by due date assigned. Establish and/or maintain effective work relationships with manager, staff, and coworkers. Share information/knowledge with other supervisors and manager.
Prioritizing Tasks	Make a list of tasks for the next day and rank them in importance. Focus on the big picture – how crucial the task is/impact on department. Delegate non-supervisory tasks to appropriate staff.
Keeping Manager Informed	Discuss current assignments with manager and their progress and/or any obstacles to progress. Notify manager in advance if task/project cannot be completed by due date to prioritize work. Discuss upcoming assignments with manager – plan of action, timeframe, and timeline.
Supervisory Skills	Clearly communicate the responsibility and expectation for each employee you supervise. Hold regular 1:1 meetings with each employee you supervise to discuss their performance. Ensure that you are handling supervisory tasks and responsibilities within the unit. Attend any relevant available training courses to develop technical and supervisory skills.
Technical Knowledge	Establish/maintain working knowledge of systems. Be able to recommend process improvements.

Received by:

Date:

Sample Performance Improvement Plan #3

(Name) (Classification) (Date) – Performance Improvement Plan

Expectation	Action Plan	Means of Measurement
Leadership –		
<ol style="list-style-type: none"> 1. Grow the self-esteem and confidence of staff 2. Reward good performance in a timely, specific manner 3. Speak positively about the Dept and its members, both within the Dept and with outside contacts 4. Hold regular 1:1 update meetings with staff 5. Promote interdependence and cohesiveness in the team 	<ol style="list-style-type: none"> 1. Remind individuals of their unique contributions 2. Use a problem-solving orientation when individuals make mistakes 3. Think and act in a professional manner, utilizing diplomacy and tact 4. Let staff have input about the method and means to complete a given task 5. Collaborate with colleagues, attend courses 	<p>Does (NAME) provide timely, specific, positive feedback to individuals and the whole team?</p> <p>Are they attentive when others have the floor?</p> <p>Does (NAME) maintain an approachable demeanor?</p> <p>Are they creating a climate of mutual respect in their team?</p> <p>Is (NAME) respectful of and respected by their colleagues?</p> <p>Are (NAME's) presentations professional and focused?</p>
Flexibility –		
<ol style="list-style-type: none"> 1. Adapt style to reflect situations / conditions 2. Regularly solicit input and feedback from manager, peers, and staff 3. Promote brainstorming 4. Do not be rigid in thinking and/or behavior 5. Be willing to compromise to meet a shared objective 	<ol style="list-style-type: none"> 1. Ask the unit to generate multiple ideas/alternatives regarding an issue 2. Seek guidance from a successful colleague re: their thinking and problem-solving tactics 3. Attend a relevant available course 	<p>Does (NAME) encourage, or shut down discussions?</p> <p>Does (NAME) remain calm, or become defensive when challenged?</p> <p>Does (NAME'S) team find their to be open to their suggestions?</p> <p>Is (NAME) accepting of, or resistant to change?</p> <p>Does (NAME) insist on having things done their way?</p> <p>Does (NAME) consider, or automatically discount others' perspectives?</p>

Expectation	Action Plan	Means of Measurement
Team Performance –		
<ol style="list-style-type: none"> 1. Set challenging yet realistic performance goals 2. Clarify priorities and methods of measurement 3. Specify scope of responsibility 4. Explain how objectives fit with the Dept’s values 5. Balance short- and long-term priorities 	<ol style="list-style-type: none"> 1. Give clear expectations to the team 2. Clarify “what” needs to be accomplished 3. Allow the team to have input into “how” it will get done 4. Read “Employee Relations Handbook” 5. Attend any relevant available courses 	<p>Does (NAME) give clear expectations to their team?</p> <p>Does (NAME) get team input on “how” to handle projects, possible barriers to success, etc?</p> <p>Does (NAME) ask employees what they need to accomplish the tasks they are given?</p> <p>Does (NAME) step in when expectations are not being met, and provide constructive criticism?</p>
Communication –		
<ol style="list-style-type: none"> 1. Actively listen 2. Express ideas clearly, concisely, & persuasively 3. Participate in group discussions without dominating them 4. Keep others (management, colleagues, team) informed 5. Write with clarity and precision 6. Monitor tone, as well as content, in written work 	<ol style="list-style-type: none"> 1. Encourage others to express their points of view 2. Avoid interrupting/cutting people off 3. Paraphrase the speaker’s points in order to seek confirmation 4. Remain open-minded 5. Use appropriate non-verbal behavior to convey interest & understanding 6. Provide information in a timely manner 7. Confidently field questions and challenges when in front of a group 	<p>Does (NAME) make people feel at ease in conversations?</p> <p>Does (NAME) allow others to talk, or does they interrupt?</p> <p>Do (NAME’s) responses indicate a comprehension of the other person’s point of view?</p> <p>Is (NAME) able to grasp the “message within the message”?</p> <p>Does (NAME) share the floor with others appropriately?</p> <p>Does (NAME) appropriately share data / information, or does they hoard it?</p> <p>Does (NAME) appropriately field questions, or does she dismiss them / ignore them / become defensive?</p>

Sample Performance Improvement Plan #4

EMPLOYEE NAME'S Performance Improvement Plan**DATE****Cleanliness and organization of the Shop**

- The workbench should be kept clean. A workbench is not a storage area.
- Garbage taken out daily.
- All tools cleaned and returned to their proper place, immediately after use.
- Office kept neat and organized. Files, work requests and invoices kept in an orderly manner and invoices submitted twice weekly.
- Parts and materials organized. Inventory kept up and extra materials properly stored in their proper place at the completion of every job.
- Shop floor swept weekly, mopped monthly.
- The shop should not be cluttered with used, broken, or otherwise useless items.

Timeliness and quality of your work

- Work requests are to be picked up at least twice daily and dated with that day's date.
- If the work cannot be completed that day, you are to notify the customer and your supervisor of the expected completion date and the reason for the delay.
- Notify the customer at the completion of the work and turn in to me complete work requests when you submit your timecard.

C. What is the process for preparing an employee performance evaluation?

The evaluation process contains the following five steps:

Step 1 – Regular Feedback Sessions

Supervisors and managers should meet with all of their employees on a regular basis throughout the rating period to give feedback on the employee's performance relative to the written performance standards and objectives for the position. This feedback should include both recognition of good performance, and constructive suggestions on aspects of the employee's performance needing improvement. In feedback sessions, supervisors should share samples of the employee's work, quality review reports, customer comments, and any other examples of work performance with the employee. These sessions should be documented in the supervisory file. [See Section 2: Documentation](#) for more information regarding documentation. If need be, the supervisor can also give the employee a memo covering the issues discussed in the feedback sessions. It is strongly recommended that supervisors and managers establish a written schedule of feedback sessions for each employee.

Ideally, a supervisor should meet with each employee on a biweekly basis. When the supervisor has noted a performance problem, they should monitor the employee's work closely and conduct more frequent counseling sessions, possibly on a weekly basis, to assist the employee in improving. The supervisor should develop a written Performance Improvement Plan (PIP) outlining areas needing improvement, and timeframes in which improvement must be made. [See Sample Performance Improvement Plans](#). Your Employee & Labor Relations representative can assist you in developing this plan. If the employee's performance does not improve in accordance with the corrective action plan, the supervisor should prepare a special performance evaluation.

Step 2 – Initial Discussion of Performance

Approximately two weeks prior to the end of the rating period, the supervisor meets with the employee to discuss the employee's performance during the rating period, identifying strengths and areas needing improvement, and discussing future objectives and goals. This discussion includes input from both the supervisor and employee and should summarize and be based on the regular feedback sessions described above. Supervisors will find the memos documenting feedback sessions to be invaluable in refreshing their memory regarding examples of positive and negative performance.

Step 3 – Draft Performance Evaluation

Based on the discussion described in Step 2, the supervisor completes an initial draft Performance Evaluation and reviews it with their manager before giving it to the employee. Next, the supervisor reviews and discusses the draft with the employee. This meeting should occur approximately one week prior to the end of the rating period.

Step 4 – Employee Comments

The employee has ten working days (two weeks) from the meeting described in Step 3 to review the draft and make comments. The supervisor cannot require an employee to provide their comments, either verbally and/or in writing, prior to the two-week review period.

Step 5 – Finalizing the Performance Evaluation

Following the ten working days review period (two weeks), the supervisor reviews the draft, considers the employee's comments, and finalizes the performance evaluation for signatures. The supervisor should consider the employee’s comments “in good faith,” meaning that although these comments do not necessarily need to be adopted wholesale into the finalized evaluation, there should be thoughtful consideration given to what the employee would like to see added, amended, and/or deleted from the draft evaluation.

The final copy is signed and dated by the supervisor (rater) and manager (reviewer) before it is given to the employee. The employee may take a few days to review the final copy, but they do not get another two-week review period. Employees are encouraged, but are not required, to sign the final evaluation. Should the employee decline to sign the final evaluation, the supervisor needs to note “Declined to Sign” on the evaluation where the employee’s signature is indicated, date it, and give a copy to the employee. The evaluation is then processed as usual for the employee’s department to ensure the final, signed performance evaluation is uploaded into the employee’s department and Civil Service personnel files. If an employee provides a written rebuttal to their performance evaluation, a copy should be included in their departmental and Civil Service personnel files.

Substandard Performance Evaluations

Employees who receive a substandard rating must be placed on a Special Review cycle. Performance evaluations must be completed every 30-60 days until the employee either receives a standard rating or is demoted or dismissed. When an employee receives a substandard rating (i.e. Improvement Needed or Unsatisfactory), the performance objectives developed for the next review period cover only the next 30-60 day period. When an employee at salary step A, B, C, or D receives an annual performance evaluation rated below standard, their merit increase (salary step increase) should be denied. If the employee’s performance does reach a standard level, a merit increase should be granted effective the following pay period.

Timeliness of Performance Evaluations

Employee performance evaluations are to be completed annually for all regular employees regardless of the length of service.

For a probationary employee, performance evaluations are to be issued according to the timelines listed below based upon the probationary period:

Probationary period	Timeframe of Performance Evaluations
6 months	Prior to end of the 3rd and 6th months
9 months	Prior to the end of the 3rd, 6th, and 9th months
12 months	Prior to the end of the 3rd, 6th, and 12th months
18 months	Prior to the end of the 3rd, 6th, 12th, and 18th months

Special Performance Evaluations

For regular employees, a performance evaluation may cover a period of less than one year. When a performance problem is identified, and counseling sessions fail to result in improvement, the supervisor should prepare a special performance evaluation.

D. What should be done if an employee is not meeting performance expectations?

First, contact Employee & Labor Relations to discuss the case and develop a strategy. Please see [Flowchart for Performance Evaluations](#) for the typical process. Each case will have its individual characteristics, but the normal steps to be followed are:

1. Formally counsel the employee, giving specific examples of where t they are not meeting the performance standard(s). Refer to any previous informal counseling sessions that were held and ask the employee if they understand the areas of concern. It is usually a good idea to have the employee state back to you what the problem is and what you expect so there is no confusion.
2. Document the results of the discussion in writing and share with the employee ([Sample Performance Improvement Plan](#)). The document should clearly outline your concerns, the employee's response (if any), what the employee has to do to improve, and the steps you will take to assist them. Meet with the employee on a regularly scheduled basis, giving specific assignments and deadlines and providing feedback on their progress. Document these meetings in writing and give the employee a copy.
3. If the employee does not improve, complete a formal performance evaluation, in this case checking the option "Special" evaluation.

Note: This step should not be taken without consulting with your manager and Employee & Labor Relations. This evaluation would cover the period of time since the last evaluation, rather than for a full year. The special evaluation will inform the employee that they will be placed on a series of Special performance evaluations.

If the employee has not had an evaluation in several years, consult with Employee & Labor Relations to discuss the option of issuing a Pre-Evaluation Memo ([Sample Pre-Evaluation Memo](#)). Although Pre-Evaluation Memos are not the norm, in situations where there has been a significant change in the employee's performance, a change in supervisor, a lengthy time period since the last evaluation, or a long-term problem that has never been dealt with, a pre-evaluation memo may be appropriate. The Pre-evaluation memo is a tool to advise the employee of an anticipated "Below Standard" (Unsatisfactory or Improvement Needed) evaluation. It should clearly outline the expectations for the period assigned.

Special performance evaluations should contain objectives for the next thirty (or sixty) day period only. If assignments cannot be completed in the next 30-60 days, the Special evaluation can establish target dates for steps or phases of the assignment to be completed within that particular review period. Discussions with the employee must inform her or him that this process is to assist the employee to improve. Your communication with the employee, however, should also inform them of the potential of demotion or dismissal if they do not improve to a "Meets Expectations" level during the process.

The length and number of special performance evaluations an employee receives is determined by such factors as the employee's length of service, the severity of the performance deficiencies, the complexity of their position, and the level of progress during the review period. Your Employee & Labor Relations representative can assist with this determination. Normally, an employee receives three special evaluations prior to action to demote or dismiss.

If the supervisor/manager is leaving and there are performance concerns regarding a particular employee, they may draft a Transition Memo for the new supervisor/manager. It should cite the employee's strengths and areas where the employee needs to improve.

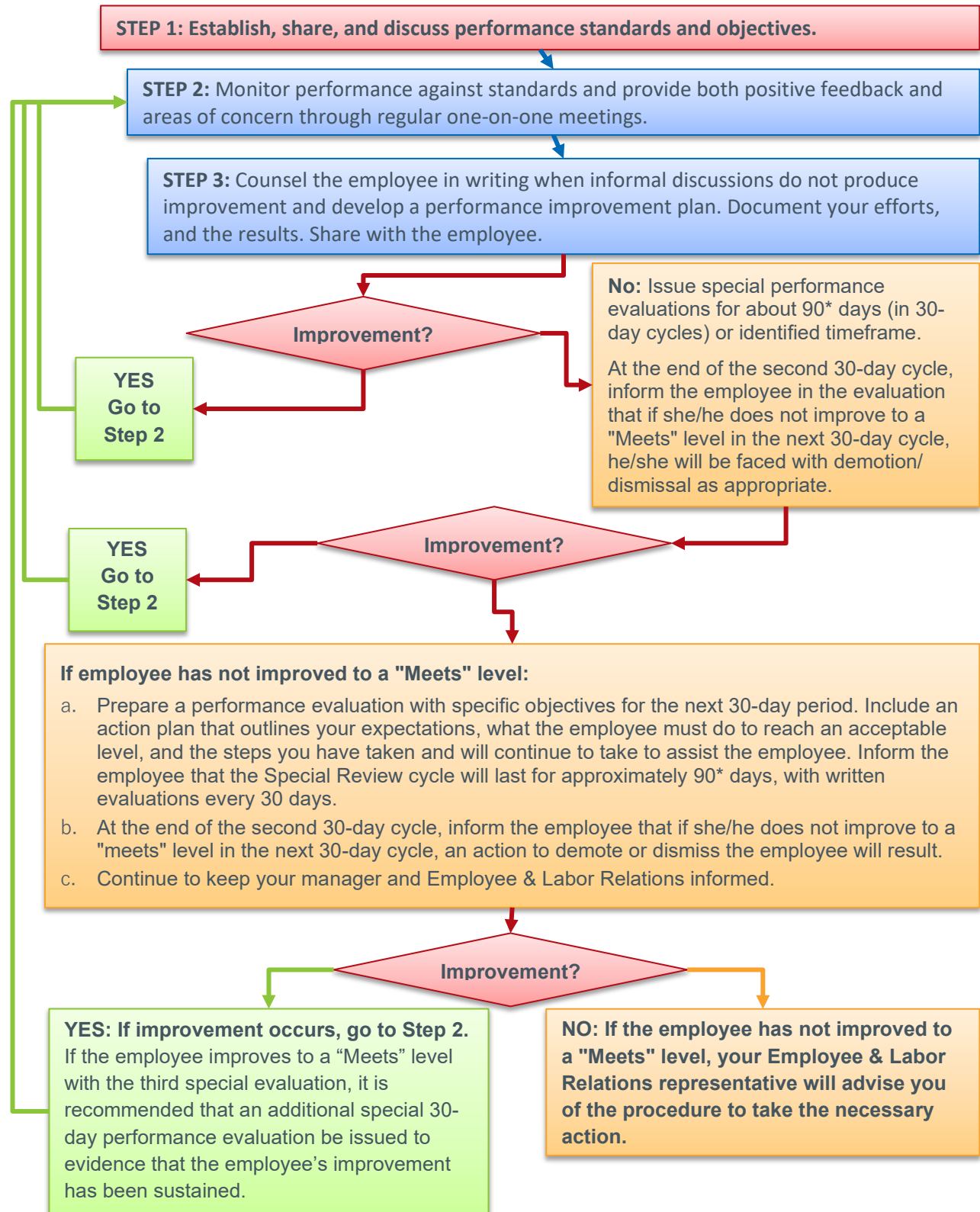
E. How does the supervisor know what to do next, and when to do it?

If you have determined that the employee is not meeting expectations during the special evaluation process and will not be able to meet them with additional coaching and time, contact Employee & Labor Relations to discuss a course of action. In performance cases, there are two options – demotion or dismissal. If an employee has the skills and abilities to do a less complex job, and there are available vacancies, demotion is the preferred option, especially if the employee has previously held a lower classification, unless the current level of performance indicates an inability to perform even the simplest portions of the current position. If the employee's deficiencies demonstrate that demotion is not a viable alternative, the choice would be dismissal.

Both dismissal and demotion are disciplinary actions, and the first line manager initiates the "Intent Letter". If demotion is a viable option, the employee may choose to voluntarily demote using the [Transfer or Voluntary Demotion Form](#). Speak with your [Employee & Labor Relations representative](#) regarding the possibility of requiring a new probationary period as a requirement for the voluntary demotion. Please refer to [Section 5: The Skelly Process](#) for further information about management roles in disciplinary actions. Please see [Sample Skelly Intent Letter – Poor Performance](#) and [Sample Skelly Decision Letter – Poor Performance](#) for example letters.

Flowchart for Performance Evaluations

(Not for Probationary Employees)



* Based on an arbitration case it should be made clear to the employee that special reviews may be terminated at any time that performance declines and disciplinary action can occur at that time.

Sample Pre-Evaluation Memo #1

Date:

To: Employee, Classification

From: Supervisor, Title

Subject: Pre-evaluation Memo

As you have not received a performance evaluation since 202X (or: As you recently moved to a new assignment, or: whatever the reason you are using the “pre-eval” method) I have decided to issue you this pre-evaluation memo in order to make clear the expectations of your position. Were you to receive an evaluation today, it would be designated as a “does not meet”. In order to give you the opportunity to show improvement in several areas prior to issuing the formal evaluation, I am giving you this memo outlining my concerns. I will be giving you a formal performance evaluation in 90 days. The areas needing improvement are:

Adhering to work schedule

Staff has been unable to locate you. Your breaks are to be no longer than 15 minutes in duration. The morning break shall be taken between the hours of 9 and 10 and your afternoon break will be taken between the hours of 3 and 4. Your mid-day meal break is at X and lasts for 30 minutes.

Security

Tools and materials must be secured at all times. Recently you (what was done that was incorrect.) Doors to the shop and other restricted areas must be locked at all times.

Organizational Skills

Prioritization: You frequently are late completing assignments. Recent examples of this are your leaving the intake files unfinished, and not completing entries until several days afterward. Recently you lost (or did not process) the paperwork for a job relating to _____.

Shop Organization/Cleanliness

- Specific issues (such as keep all paint colors in alphabetical order.)
- Sweep shop on a weekly basis.
- Keep all flammable materials in the X area.

Adaptability

You are not keeping up with fast-paced calendars, become overwhelmed, and do not demonstrate the ability to multitask. For example, _____.

For the most part, the above are ongoing problems that have been discussed with you. Although there has been some progress, there continues to be a need for significant improvement in your (list two most significant areas). As you are in a one-person assignment, it is critical that the staff you serve know how and where to find you. Further, it is extremely important to the safety of both you and your coworkers that you maintain an orderly inventory of your tools and supplies, and they are kept in a secure location.

Over the next 90 days, I will be working with you to assess your progress in these areas. As your direct supervisor, it is imperative that you work closely with me. In approximately 90 days, I will provide you with a formal performance evaluation. There will need to be significant improvement in the above areas in order for me to be able to rate you as meeting the standards of your position.

cc: Writer's Manager

Sample Pre-Evaluation Memo #2

– PLACE ON YOUR DEPARTMENTAL LETTERHEAD –

To: EMPLOYEE’S NAME, CLASSIFICATION

From: SUPERVISOR’S NAME, CLASSIFICATION

Date: [INSERT DATE]

SUBJECT: Pre-Evaluation Memo

As you have not received a performance evaluation since 202X, I have decided to issue you this pre-evaluation memo in order to make clear the expectations of your position. Although you continue to perform well in certain areas, were you to receive an evaluation today, there are several areas that would be designated either “Unsatisfactory” or “Improvement Needed”. In order to give you an opportunity to show improvement in these areas prior to issuing the formal evaluation, I am giving you this memo outlining my concerns. I will be giving you a formal evaluation in approximately 60 days.

The areas requiring immediate and sustained improvement are:

Quality of Work: Thoroughness & Judgment

We have had numerous discussions regarding your backlog and have discussed those concerns with you, most recently on DATE(S). I have also impressed upon you the importance and requirement in maintaining accurate and comprehensive files. Yet, you continue to fall behind in meeting this expectation.

As a(n) CLASSIFICATION, you are expected to [INSERT DETAILS]

As of DATE, it appears there are approximately X reports overdue. After writing your reports, use spell check and proofread them in order to minimize your errors. When I return reports to you for correction, they are to be submitted in a timely manner to be sent out to families and the doctors. It’s been clear during our follow-up discussions that re-written reports are not being submitted in a timely manner.

Monthly progress notes need to be completed on clients you have seen and must be available at the time of our review. Frequently, it is noted you are late and do not respond to notices asking you to supply notes to the team.

Quantity of Work: Amount of Work Performed & Work Completed on Schedule

As of DATE, your current productivity percentage was XX%. Since that date, we have transferred X of your cases to another staff member, yet your percentage is now XX%. The expected percentage for each CLASSIFICATION is XX%. You have approximately X reports overdue. In our meeting on DATE, you agreed to gather the data for your overdue case reports by close of business the following Friday. You are expected to complete and submit to me the X overdue reports by DATE.

These delays with your case reports are unacceptable. If any other team member were to review your case files, they would not have the benefit of knowing its current status and/or the care you have provided to date. This has tremendous impact on the clients we serve and does not satisfy the purpose/mission of our department.

CLASSIFICATION who receives cases transferred by you need to be given current documentation at the time of the transfer. In the past, it has often taken you several weeks and sometimes a month or more to transfer the entire case. Cases that should be closed should be done the same month you have spoken with the client about closing their case. When cases are closed due to families moving out of county, the client cannot get therapy until we've sent the new county the appropriate chart. Delaying services to a client is unconscionable and is not permitted.

When closed cases remain on the master file, the department is at risk, in particular if an audit takes place.

Adaptability: Performance Under Pressure & Performance with Minimum Instruction

You are expected to perform your duties under general supervision, rather than close supervision. I am concerned about your willingness to complete assignments without repeated requests by me for follow up on progress notes and/or case reports. With your years of experience, you are or should be aware that written documentation is required within a prescribed timeframe. Not documenting these visits in a timely manner is both a liability and concern for the department and San Mateo County.

Work Habits: Observe Work Rules, Application to Work Assignments, Organizational Skills

I have documented in your previous performance evaluations that you have great difficulty in completing required paperwork. I have also not allowed you to take paid vacation time when you were not caught up on your requisite documentation. I will continue to do so until you are current with your case files.

I have also asked that you schedule meetings with me rather than have me contact you for each case requiring clarification. The meetings scheduled rarely start at the original scheduled time and/or date as you typically need an extension to complete the requisite work.

For my part, I have enrolled you in the next "Managing Time Successfully" County course, which will be offered on DATE from TIME a.m. to TIME p.m. at the Captain's House in Coyote Point Park. Upon completion of the course, I will expect you to brief me in our next scheduled supervision meeting on what you learned in the class and how you will apply it to your work. I would like to see your work habits change so I do not feel the need to review your documentation.

Summary

This document will not be placed in your personnel file. The above are ongoing problems that have been discussed with you. Over the next 60 days, I will be working with you to assess your progress in these areas. In order to help achieve this I am going to meet with you weekly, otherwise every other week, beginning the week of DATE for our supervision meetings.

In approximately 60 days, I will provide you with a formal performance evaluation. There will need to be significant improvement in the above areas in order for me to be able to rate you as meeting certain standards of your position.

cc: MANAGER, CLASSIFICATION

Sample Supervisor Transition Memo

Print on Departmental Letterhead

Date: January 29, 2025

To: NEW SUPERVISOR, CLASSIFICATION

From: CURRENT SUPERVISOR, CLASSIFICATION

Subject: Transition Memo

As you will be taking over the NAME Unit effective February 2nd, I want to share with you my observations of Joan's performance over the past 12 months, list what I see to be her strengths, and cite areas where I feel she can make some improvements.

The job duties of a CLASSIFICATION working in the Unit include: INSERT DETAILS

Strengths:

Joan schedules appointments based on office guidelines and completes transfers in a timely manner. She works her cases well. She continuously enhances her knowledge of court orders and is better able to interpret orders and verify calculations. In addition, Joan sets up accounts appropriately and updates the NAME system with the correct information, including payments and summary details.

Joan demonstrated a great deal of adaptability both during training and post system conversion. She retains new system and procedure information well and is quickly able to apply her new knowledge. Joan keeps accurate training notes for herself, which she can easily reference.

Joan is skillful at multitasking and manages her days well, as demonstrated by her ability to maintain her daily casework, calls, and drop-ins.

She works well with her team and her clients. She is a team player and exhibits a willingness to assist with coverage including drop-ins. I have found that Joan is more apt to correspond with clients via mail rather than by telephone. I think that she can sometimes work more efficiently if she utilizes the telephone, fax, and email as appropriate in order to expedite the work, assist with her information gathering, and provide case status information to clients.

Areas for Improvement:

During the rating period of February 2024 to October 2024, Joan produced 200 Complaint Reports and received 20 case reports back for clerical errors, missing information and other procedural errors, for an overall error rate of 10%. This is a great improvement from the previous year. However, I think that there still is room for improvement, especially considering the expectation is for an error rate of no more than 7%. The types of errors I have seen include missing narratives, misspelled/incorrect names, a calculation that had different income information than was stated in the narrative, not indicating that the Complaint

was a Supplemental, and naming the wrong party as the Respondent. Joan and I last met on December 15, 2024, to discuss her performance and areas for improvement.

The target goal for the unit is for each person to produce an average of 30 Complaints per month. Joan is meeting this goal by 76%. Only during 3 months did Joan meet this goal. In June 2024, Joan produced 33 Complaints, July 2024 she produced 32 and in September 2024 she produced 30. Otherwise, the number of Complaints produced ranged from 11 to 29 cases per months.

Joan also has a tendency to not take action when a task is due, but rather sets a new date for review without indicating in the case the purpose for the delay. On Case #1234, the progress notes were due in April 2024 and the notes were not completed until reviewed by other staff in July 2024. Similarly, on Case #9876, the amended Complaint was scheduled for review in August 2024 and no action was taken until it was reviewed by other staff in October 2024. On Case #2468, again, Joan created an entry for service in June 2024, but no action was taken for 3 months. On Case #1357, no notes were completed between the months of February 2024 and July 2024. On all of these cases, Joan closed the files while the progress notes remained incomplete.

Joan has had some difficulty in preparing her Complaints, specifically in regards to calculating income. On Case #1111, Joan prepared a Complaint attributing minimum wage earnings for the respondent rather than using actual earnings that were available and on Case #9999, Joan should have used the respondent's W-2 earnings (including tips) in her calculations rather than pay stubs, which provided only her base pay and did not include her tips.

On a few occasions, Joan has processed a Complaint without the need to take action on a case. Joan should more thoroughly review each case prior to processing a Complaint. She should review cases at the onset to make the determination whether there is information and a need to proceed or to prepare the case for closure.

cc: Joan Smith, CLASSIFICATION
Supervisory File

Sample Employee Performance Report

Contact Employee & Labor Relations for the Fillable PDF form.



COUNTY OF SAN MATEO

EMPLOYEE PERFORMANCE REPORT

PURPOSE

To provide an opportunity for supervisor and employee to discuss and establish written performance standards, performance objectives, strengths and areas needing improvement. This should be done in a way that promotes two-way discussion to help employees understand their supervisor’s expectations in order to achieve and maintain successful performance, change their performance in areas needing improvement, and identify areas for personal growth opportunities.

- To help the employee improve work performance.
To inform the employee about progress on the job.
To give the employee recognition for good work.
To determine training needs.

The Use of Sub-Items

The use of the sub-items listed under “factors” is recommended. The sub-items should be checked (+, -, ✓) to indicate strong, weak or competent performance. By use of sub-items, factor ratings will be easier to identify.

Overall Evaluation

EXCEPTIONAL.....Total work performance is definitely superior and well above the standards of performance required for the position. Justification of this rating must be made in writing in the “comments” section.

COMPETENT.....Total work performance is consistently up to or somewhat above the requirements of the position. This is the performance which is expected of a trained and qualified employee.

IMPROVEMENT NEEDED.....Total work performance is below the standards of performance required for the position. This evaluation indicates that serious effort is needed to improve performance. Justification of this rating must be made in writing in the “comments” section.

UNSATISFACTORY.....Total work performance is inadequate and definitely inferior to the standards of performance required for the position. Justification of this rating must be made in writing in the “comments” section.

NOTE: Although written comments are not required, it is highly recommended that they be included on every evaluation, particularly if the employee’s performance tends to be borderline within these categories.

EMPLOYEE EVALUATION COUNTY OF SAN MATEO	CLASS CODE DRAFT	NAME Jan Diver	EMPLOYEE ID NUMBER ### ## ####																																																																																																																																																																														
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Jan, you perform a wide variety of office support tasks, including filing, data entry, receptionist duties, and typing. You efficiently organize and complete your tasks, and are always willing to cover the forms desk when needed. Your willingness to pitch in supports our department's value of team problem-solving. You organize your time well, and handle last-minute project requests with aplomb. I can count on you to get things done.																																																																																																																																																																																	
Concerns with data entry accuracy were addressed in February 2004, and since that time, your accuracy has improved to standard.																																																																																																																																																																																	
You have familiarized yourself with systems and are further developing you computer skills; you expect to complete Access and Excel training by January 2005.																																																																																																																																																																																	
We have discussed your tendency to say exactly what is on your mind, and that the manner in which you make comments sometimes is of concern. For example, being abrupt with coworkers when needing to wait for them to complete their part of a project before you can input the data. We have discussed better ways to handle such situations.																																																																																																																																																																																	
I have needed to speak with you twice about the amount of time spent on personal calls and socializing with others. You have made a commitment to limit such activities. In addition, tardiness and other unplanned absences were addressed during this rating period, and since July there has been improvement.																																																																																																																																																																																	
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RATER	TITLE	SIGNATURE	DATE
1			
REVIEWER	TITLE	SIGNATURE	DATE
2	I HAVE REVIEWED THIS REPORT WITH THE FOLLOWING COMMENTS:		
EMPLOYEE	I HAVE REVIEWED THIS REPORT AND DISCUSSED IT WITH MY RATING SUPERVISOR, MY SIGNATURE DOES NOT NECESSARILY INDICATE AGREEMENT. I UNDERSTAND I MAY ATTACH MY COMMENTS IF I SO CHOOSE.		DATE
3			

Sample Skelly Intent to Dismiss Letter – Poor Performance

– PLACE ON YOUR DEPARTMENTAL LETTERHEAD –

October 20, 2025

Employee Name

Title

Department

Hand-delivered

Dear Mr. Employee:

Please take notice that it is the intent of this office to dismiss you from your position of Social Worker effective November 3, 2025. The grounds upon which this disciplinary action is being proposed are in accordance with Section 4 of Civil Service Commission Rule XIII as follows:

(F) Unacceptable Performance. Unacceptable performance shall mean want of ability suitable to the work, either as regards natural qualities or experience or deficiency of disposition to use one's ability and experience properly, or failure to continue to perform at an acceptable level.

On October 18, 2025, you received a performance evaluation with a summary rating of "Unsatisfactory". This performance evaluation documents your failure to perform at an acceptable level and is the latest in a series of performance evaluations documenting your below standard performance. A summary of this documentation is outlined below:

June 2009-April 2025 – Your supervisor, Name, counseled you verbally and in writing about your unacceptable performance. Specific areas of concern were failure to prepare court reports in a timely manner, court reports that were inaccurate and grammatically incorrect, failure to maintain an organized work area, failure to plan and organize your work, failure to observe work hours and discourteous conduct toward clients, coworkers and your supervisor.

April 21, 2025 – Your supervisor issued a memo formally advising you that your performance was unsatisfactory. In this memo, your supervisor stated that, if you were to be evaluated today, the evaluation would have a summary rating of "Unsatisfactory." Your supervisor stated that you would be afforded 60 days to bring your performance to an acceptable level and would be evaluated at the end of that 60-day period. Your supervisor laid out specific areas in which you needed to improve in order to receive a satisfactory rating (e.g., timeframes for submission of court reports). In an effort to assist you in improving, your supervisor set regular weekly meetings with you (rather than the bi-weekly meeting with other staff) and reduced your caseload.

June 30, 2025 – Your performance did not improve to an acceptable level, and, on June 30, 2025, you were issued a performance evaluation with a summary rating of "Improvement Needed." Among the problems cited in this evaluation were court reports not completed in a timely manner; court reports with many grammatical, spelling and factual errors; disorganization of your work area; failure to plan and

organize work; failure to observe work hours; and discourtesy, particularly toward your supervisor. As a result of this below standard performance evaluation, you were placed on a 30-day evaluation cycle with specific goals and objectives to accomplish over the next 30 days.

August 7, 2025 – Your supervisor issued an evaluation of your performance covering the period of July 1-August 4, 2025. This evaluation had a summary rating of Unsatisfactory. In this evaluation, your supervisor documented your failure to meet the goals and objectives set for you. Specifically, it was documented that you still failed to meet expectations in the areas of preparing timely court reports, preparing accurate and grammatically correct court reports, failure to plan and organize work, failure to observe work hours, and discourtesy toward your supervisor. Your supervisor also cited the fact that your caseload was very low during the rating period as you were carrying fourteen to seventeen cases while the standard is twenty-six cases. Your supervisor also advised you in writing that failure to improve your performance to an acceptable level would result in disciplinary action up to, and including, dismissal from County employment. The evaluation set specific goals and objectives for the next 30-day rating period.

September 12, 2025 – Your supervisor issued another evaluation of your performance covering the period of August 7-September 8, 2025. This evaluation had a summary rating of Unsatisfactory. In this evaluation, your supervisor documented your failure to meet the goals and objectives set for you. Specifically, it was documented that you still failed to meet expectations in the areas of preparing timely court reports, preparing accurate and grammatically correct court reports, failure to plan and organize work, failure to observe work hours, and discourtesy toward your supervisor. Your supervisor also cited the fact that your caseload was very low during the rating period as you were carrying sixteen cases while the standard is twenty-six cases. Your supervisor also advised you in writing that failure to improve your performance to an acceptable level would result in disciplinary action up to, and including, dismissal from County employment. The evaluation set specific goals and objectives for the next 30-day rating period.

October 18, 2025 – Your supervisor issued an evaluation of your performance covering the period of September 11-October 13, 2025. This evaluation was marked with a summary rating of Unsatisfactory. In this evaluation, your supervisor cited the fact that your caseload was still very low during the rating period as you were carrying sixteen while the standard is twenty-six cases. Your supervisor documented that you had not met performance expectations in the areas of preparing court reports, desk organization, filing in the case records, time management, and submitting forms with all the required information completed. Your supervisor noted that, during this rating period, two complaints were received from the Court Commissioner about you. These complaints were about a detention memo omitting necessary information which was not up to professional standards demonstrated by other social workers, and about your failure to obtain court authorization prior to sending a child on a visit out of county.

The October 18, 2025, performance evaluation was the fourth consecutive below standard evaluation you have received. These evaluations document severe deficiencies in your performance over a 16-month period. In spite of your supervisor's continuing efforts to work with you, you have failed to perform at a satisfactory level. During the most recent rating period, we received two complaints from the Court Commissioner about you. Your failure to perform at an acceptable level constitutes Unacceptable Performance, in violation of Civil Service Rule XIII 4(F).

All written materials, reports and documents upon which this action is based are available to you by contacting me. You will further take notice that you have the right to respond either orally or in writing, or both, to the charges contained in this letter. If you wish to respond in writing, your response must be received by Ms. X no later than November 1, 2025. If you wish to respond orally, you must contact Ms. X no later than October 30 to schedule a meeting to be held no later than November 1. If you do not contact Ms. X or provide a written response by the above dates, it will be assumed that you have waived this right. You have the right to be represented by your union in this matter.

Sincerely,

Name

Division Director

cc: Department Head
Skelly Officer
Supervisor
Rocio Kiryczun, Human Resources Director
Civil Service Personnel File
Department Personnel File

Sample Skelly Decision Letter – Poor Performance

– PLACE ON YOUR DEPARTMENTAL LETTERHEAD –

November 3, 2025

Employee Name

Title

Department

Hand-delivered

Dear Mr. Employee:

Please take notice that it is the decision of this office to dismiss you from your position of Social Worker effective November 3, 2025. The grounds upon which this disciplinary action is being taken are in accordance with Section 4 of Civil Service Commission Rule XIII as follows:

(F): Unacceptable Performance. Unacceptable performance shall mean want of ability suitable to the work, either as regards natural qualities or experience or deficiency of disposition to use one’s ability and experience properly, or failure to continue to perform at an acceptable level.

On October 18, 2025, you received a performance evaluation with a summary rating of “Unsatisfactory”. This performance evaluation documents your failure to perform at an acceptable level and is the latest in a series of performance evaluations documenting your below standard performance. A summary of this documentation is outlined below:

June 2009-April 2025 – Your supervisor, Name, counseled you verbally and in writing about your unacceptable performance. Specific areas of concern were failure to prepare court reports in a timely manner, court reports that were inaccurate and grammatically incorrect, failure to maintain an organized work area, failure to plan and organize your work, failure to observe work hours and discourteous conduct toward clients, coworkers and your supervisor.

April 21, 2025 – Your supervisor issued a memo formally advising you that your performance was unsatisfactory. In this memo, your supervisor stated that, if you were to be evaluated today, the evaluation would have a summary rating of “Unsatisfactory.” Your supervisor stated that you would be afforded 60 days to bring your performance to an acceptable level and would be evaluated at the end of that 60-day period. Your supervisor laid out specific areas in which you needed to improve in order to receive a satisfactory rating, (e.g., timeframes for submission of court reports). In an effort to assist you in improving, your supervisor set regular weekly meetings with you (rather than the biweekly meetings with other staff) and reduced your caseload.

June 30, 2025 – Your performance did not improve to an acceptable level, and, on June 30, 2025, you were issued a performance evaluation with a summary rating of “Improvement Needed.” Among the problems cited in this evaluation were court reports not completed in a timely manner; court reports with many grammatical, spelling and factual errors; disorganization of your work area; failure to plan and organize work; failure to observe work hours; and discourtesy, particularly toward your supervisor. As a

result of this below standard performance evaluation, you were placed on a 30-day evaluation cycle with specific goals and objectives to accomplish over the next 30 days.

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September 12, 2025 – Your supervisor issued another evaluation of your performance covering the period of August 7-September 8, 2025. This evaluation had a summary rating of “Unsatisfactory.” In this evaluation, your supervisor documented your failure to meet the goals and objectives set for you. Specifically, it was documented that you still failed to meet expectations in the areas of preparing timely court reports, preparing accurate and grammatically correct court reports, failure to plan and organize work, failure to observe work hours, and discourtesy toward your supervisor. Your supervisor also cited the fact that your caseload was very low during the rating period as you were carrying sixteen cases while the standard is twenty-six cases. Your supervisor also advised you in writing that failure to improve your performance to an acceptable level would result in disciplinary action up to, and including, dismissal from County employment. The evaluation set specific goals and objectives for the next 30-day rating period.

October 18, 2025 – Your supervisor issued an evaluation of your performance covering the period of September 11-October 13, 2025. This evaluation was marked with a summary rating of “Unsatisfactory.” In this evaluation, your supervisor cited the fact that your caseload was still very low during the rating period as you were carrying sixteen while the standard is twenty-six cases. Your supervisor documented that you had not met performance expectations in the areas of preparing court reports, desk organization, filing in the case records, time management, and submitting forms with all the required information completed. Your supervisor noted that, during this rating period, two complaints were received from the Court Commissioner about you. These complaints were about a detention memo omitting necessary information which was not up to professional standards demonstrated by other social workers, and about your failure to obtain court authorization prior to sending a child on a visit out of county.

The October 18, 2025, performance evaluation was the fourth consecutive below standard evaluation you have received. These evaluations document severe deficiencies in your performance over a 16-month period. In spite of your supervisor’s continuing efforts to work with you, you have failed to perform at a satisfactory level. During the most recent rating period, we received two complaints from the Court Commissioner about you. Your failure to perform at an acceptable level constitutes Unacceptable Performance, in violation of Civil Service Rule XIII 4(F).

On November 1, you and your Union representative met (name) to present an oral reply to the charges against you. You and your representative raised several issues in that reply which I have fully considered. The points you raised and my findings relative to them are outlined below:

You have not been fully trained in your duties.

I found that you have been a Social Worker III for 6 years and received all pertinent training. I further found that your supervisor has spent additional time meeting with you during the past year to discuss cases and provide guidance. I found that you missed many meetings with your supervisor, canceling them at the last moment or leaving the meetings when you were being counseled about errors. It is my finding that many training opportunities have been made available to you and that, as an experienced Social Worker III, additional training should not have been required for the basic errors you made.

Many of your errors were due to following the direction provided by your supervisor. You stated that you wanted to take other steps on cases, but your supervisor directed you to take steps that were later counted as errors.

I found no evidence to support this allegation. When I asked you for specifics, you provided one case. I investigated that allegation and found that you sought advice on the case from three different supervisors and two managers and that you provided each of these five individuals with different information relative to the case. Each of them provided sound advice based on the facts you presented. This case was reviewed by an independent manager who concurred that the errors were due to the incomplete information you provided, rather than to the advice you were given.

You said that your supervisor had singled you out and that you could be successful with another supervisor.

In reviewing your personnel file, I found that two other supervisors you had previously worked for also documented performance problems. In both cases, you requested and were granted a transfer to a different supervisor. Based on this history, I must conclude that your performance problems are not due to disparate treatment by your supervisor.

After considering the information you presented, I have concluded that this action is for cause and dismissal is warranted. The extent of your performance problems, the fact that they involve basic skills such as time management and organization of your workload, and the lack of acceptance on your part for responsibility for your performance deficiencies have convinced me that demotion is not an option. I am, therefore, dismissing you from your position effective November 3, 2025.

Sincerely,

Name

Division Director

cc: Department Head
Manager
Supervisor
Rocio Kiryczun, Human Resources Director
Civil Service and Department Personnel Files

7. CONDUCT

Conduct cases are those where an employee fails to comply with work rules, policies, and procedures such as arriving for work on time; treating clients and coworkers with courtesy and respect; being honest; maintaining a good attendance record; following procedures for requesting time off; using County time, supplies and property in a responsible manner; and other similar behavior-related areas. Violations of these work rules, policies, and procedures can form the basis for corrective and ultimately disciplinary action, up to and including dismissal from employment.

A. What is the supervisor's responsibility regarding employee conduct?

First, you must clearly communicate your expectations. Employees must know that they are expected to arrive for work on time, return promptly from breaks, follow procedures for requesting time off, treat customers and coworkers with courtesy and respect, etc. If your department has written policies covering these areas, make sure each employee receives a copy or knows where the unit's copy is.

Supervisors are also responsible for monitoring employees' conduct and for providing honest and timely feedback when an employee fails to meet expectations.

B. What should be done if an employee does not adhere to conduct expectations?

The first step is to conduct an investigation. If you have personally observed the misconduct (e.g. an employee arrives late for work), the investigation may consist of a simple interview of the employee to get their side of the story. Investigations are discussed in detail in [Section 8: Conducting Employee Investigations](#).

When minor misconduct occurs for the first time (e.g. an employee is late arriving for work), and the interview of the employee does not indicate mitigating or extenuating circumstances that would excuse the offense, verbal counseling is usually sufficient. Do not ignore the problem hoping it will correct itself. By not confronting the problem and letting the employee know it is not acceptable, you are sending a message to the employee that you are not concerned and are establishing a practice of accepting the misconduct as acceptable behavior.

If minor misconduct of this nature recurs, you will again need to interview the employee to get their side of the story. If there are no extenuating circumstances that excuse the employee's behavior, you will need to counsel the employee and document that counseling discussion in the form of a memo. Please see [Sample Counseling Memo for Discourtesy](#). In the memo, you should clearly outline the conduct that is unacceptable, stress the employee's responsibility to correct the misconduct, and list steps you and/or the employee will take to correct the problem. For instance, you may change an employee's work schedule or starting time to correct a tardiness or attendance problem or may send an employee to a course to improve interpersonal skills.

You should include in the memo a statement regarding the Employee Assistance Program. Give the employee a copy of the memo, noting on your copy the date it was given to the employee and retaining a copy in your supervisory file.

If the misconduct continues to recur, contact Employee & Labor Relations. The next step is normally a Letter of Reprimand, but other action may be warranted depending on the seriousness of the infraction, the length of time since the last infraction, and other mitigating factors. You should include a statement that failure to correct the misconduct may result in disciplinary action, up to and including, termination. There is no time limit in which employees may respond to or rebut letters of reprimand. Any response or rebuttal should be attached to the copy of the reprimand in the employee's Civil Service Personnel File. Please see [Sample Letter of Reprimand for Discourtesy](#).

The memos/letters referred to above, as well as your notes of discussions with the employee, will become essential parts of the employment record if the misconduct continues and disciplinary action must be taken.

C. How does the supervisor know what to do next, and when to do it?

If the misconduct still continues, or if the first instance of misconduct is serious in nature, contact Employee & Labor Relations for consultation on the appropriate course of action. Following the concept of progressive discipline, Employee & Labor Relations will advise you to take the lowest level of corrective/disciplinary action that will be likely to correct the problem. In determining the level of action to take, you will look at the following factors:

- The seriousness of the offense and the relationship to the employee's duties
- The employee's position and level of responsibility (i.e., supervisory/public trust)
- The employee's past disciplinary record
- The employee's past work record and years of service
- The effect of the offense on the supervisor's confidence in the employee
- The consistency of the penalty with that imposed on other employees
- The clarity with which the employee was placed on notice
- The potential for rehabilitation
- Any mitigating circumstances (provocation by others, etc.)

D. What is progressive discipline?

When an arbitrator decides whether to sustain or overturn a disciplinary action, they consider a number of factors. One of those factors is whether the level of discipline that was taken was appropriate under the circumstances. In making this determination, the arbitrator expects to see that any serious discipline was preceded by lesser discipline to place the employee on notice that the conduct is unacceptable and that more severe discipline may result if the conduct is not corrected. This does not mean that every infraction must go through every step of the corrective action process. Some forms of misconduct, such as theft, may warrant dismissal on the first offense.

Since each case is unique, there is no easy formula that tells you what level of progressive discipline should be taken for any given form of misconduct. Generally, for minor misconduct such as tardiness, absenteeism or discourteous conduct, progressive discipline would normally follow these steps: verbal counseling, counseling memo, letter of reprimand, disciplinary letter equating to a 1-day suspension, disciplinary letter (or letters) equating to a 3-to-30-day suspension, and finally dismissal. It is possible to repeat steps in the process. For example, you may verbally counsel an employee about tardiness and then issue a written counseling memo if the tardiness continues. If the employee then goes for an extended period of time without a tardy and then is again tardy, it may be best to issue another counseling memo rather than move to a letter of reprimand. The reason is that the counseling memo was effective in causing the employee to modify their behavior.

Non-Punitive Discipline Program Description

All County employees are covered by the Non-Punitive Discipline Program. The Sheriff's Office reserves the right to impose unpaid suspensions on sworn law enforcement employees when warranted.

Overview of Traditional Discipline Program

The County practices the concept of progressive discipline. When an employee's conduct warrants corrective action, the supervisor/manager takes the lowest level of disciplinary action which: 1) is appropriate to the severity of the employee's offense; and 2) is likely to result in the employee not repeating the misconduct.

Under a traditional discipline program, minor misconduct (e.g., initial instances of tardiness or absenteeism) is normally dealt with through counseling confirmed in writing. Should the misconduct be repeated, the normal progression is a letter of reprimand followed by a suspension. Further misconduct may result in a second suspension, demotion, or dismissal. Misconduct of a more serious nature may result in suspension, demotion, or dismissal on the first offense.

The Non-Punitive Discipline Program follows the same steps as a traditional program with one exception – unpaid suspensions are replaced by disciplinary letters that equate to a suspension of a specified number of days. Non-Punitive Discipline is not a lower level of discipline than a suspension and does not include the option to suspend rather than issuing a non-punitive disciplinary letter. This provision was put into place to avoid disparate treatment (i.e. suspending one employee and issuing another employee who committed the same offense a non-punitive disciplinary letter).

The non-punitive disciplinary letter carries the same weight as a corresponding suspension. An arbitrator hearing a grievance on a subsequent offense for an employee who had previously been issued a disciplinary letter equating to a 3-day suspension must consider the employee to have been suspended for 3 days. Since non-punitive discipline carries the same weight and equates to an unpaid suspension, the burden of proof to show cause is also the same. In other words, the manager/department must be prepared to produce the same level of proof before the Civil Service Commission or an arbitrator as if the employee had been suspended.

Objectives of the Non-Punitive Discipline Program

The overall goal of the Non-Punitive Discipline Program is to improve public service and productivity in the workplace by:

- Correcting conduct problems promptly, rationally and constructively
- Alleviating the financial impact of discipline on employees' families
- The employee remains working during the suspension, so the department is not impacted by the suspension by having to cover that workload
- Taking disciplinary action, which is just, equitable and sustainable

Non-Punitive Discipline Program Overview

The Non-Punitive Discipline Program replaces unpaid suspensions with a disciplinary letter which fully equates to a suspension of a specified length (e.g., one day, three days, etc.) and the Union agrees and acknowledges that the disciplinary letter carries the full weight of such a suspension for the purposes of establishing progressive discipline. This process eliminates the financial impact of a suspension on the employee and the employee's family while still establishing a record of progressive discipline should the offense recur. This process also eliminates the need for the department to replace the employee during the suspension, thereby conserving County funds.

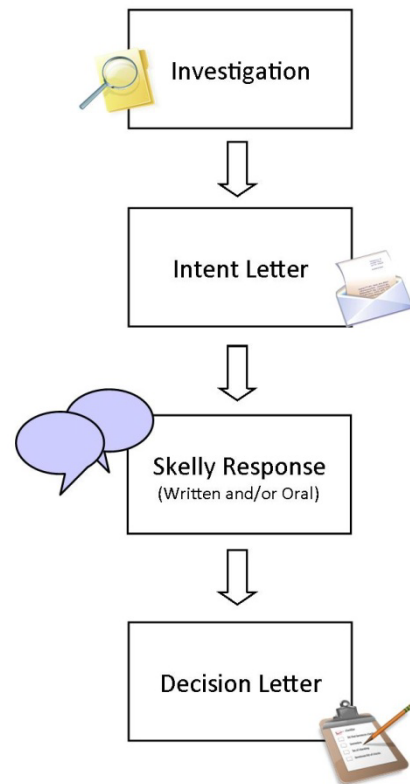
Employees retain the right to appeal non-punitive discipline through the grievance process or to the Civil Service Commission.

How the Non-Punitive Discipline Program Works

The Non-Punitive Discipline Program is designed to help correct conduct and attendance problems by serving as a step in progressive discipline. Normally, the Non-Punitive Discipline Program will not be used to correct performance problems (quantity/quality of work). Performance problems are dealt with through counseling, corrective action plans with performance-specific objectives and outcomes, and performance evaluations.

Investigation – When an incident of misconduct or an attendance problem has been investigated and it is found that more likely than not unacceptable behavior occurred, the department confers with Employee & Labor Relations and makes a determination regarding the appropriate level of discipline. If it is determined that the infraction does not warrant demotion or dismissal but does warrant more than counseling or a letter of reprimand, the non-punitive discipline program will be used.

Intent Letter – A Skelly Letter of Intent is issued to the employee stating that it is the intent of the department to issue a disciplinary letter equating to a suspension of a specific number



of days. This letter takes the same form as the usual Skelly letter but, instead of proposing a suspension, proposes a disciplinary letter equating to a suspension. Please see [Sample Intent Letter – Non-Punitive Discipline](#).

Oral/Written Response – The normal Skelly process is followed, with the employee having the opportunity to make an oral and/or written response to the charges in the Intent Letter.

- a. If the employee presents information which causes the department decision maker to determine that the disciplinary letter is not warranted, the case will be closed with a letter of reprimand, a warning letter, or a letter clearing the employee of the charges, as appropriate.
- b. If the department decision maker determines that the disciplinary letter is warranted, they will issue a decision letter, imposing the disciplinary letter in lieu of a suspension. As in other disciplinary actions, the department decision maker may decide to modify the proposed discipline (e.g. a letter equivalent to a 1-day suspension rather than one equivalent to a 3-day suspension) based on the employee's response. Please see [Sample Decision Letter – Non-Punitive Discipline](#).

The management official hearing the oral response determines, based on the employee's response and by asking questions, whether the employee acknowledges that the misconduct for which they are being disciplined was improper, and whether it is the employee's intent not to repeat the misconduct.

1. In some instances, such as an isolated incident where training, counseling or other actions are likely to permanently resolve the issue, if the employee acknowledges that their misconduct was improper, and indicates the intent not to repeat the misconduct, a rehabilitation plan is developed. This plan will list actions the employee will take and/or training the employee will attend to ensure that the misconduct does not recur. The plan will also set a timeframe during which misconduct must not recur. Once the actions laid out in the rehabilitation plan are completed and the agreed upon timeframe has elapsed without further misconduct, the disciplinary letter will be removed from the employee's personnel files. At this point, the matter will be closed, and the employee will be considered fully rehabilitated.
2. If the employee does not acknowledge that their misconduct was improper, and/or does not indicate the intent not to repeat the misconduct, no rehabilitation plan will be developed, and the letter will remain in the employee's personnel files.

Sample Counseling Memo for Discourtesy

DATE: Day following Interview
TO: Employee, Classification
FROM: Name, Supervisor
SUBJECT: Counseling on Discourtesy

As a result of my meeting with a client yesterday, I became aware that you had raised your voice and stated that you had lost your patience with her.

When I spoke to you about this, you indicated that you had indeed become frustrated with the client and may have been harsher than you intended. You also stated that the client had been here twice before and continued to fail to bring the documentation you requested of her.

Although clients can be difficult at times, it is your responsibility to maintain control over yourself and the situation. You represent the County to that client, and the client is entitled to courtesy, respect, and the entitlement provided by law.

I recognize that you are aware of your part in this and have stated your commitment to change your conduct.

Finally, I want to remind you that the free and confidential services of the employee assistance program, administered by Claremont EAP at 1-800-834-3773, are available to assist you with any difficulties you may be having.

cc: Supervisory File

Sample Letter of Warning for Waste of County Time

– PRINT ON DEPARTMENTAL LETTERHEAD –

Date: July 31, 2025

To: Janine Jones, Legal Office Services Supervisor

From: Alan Smith, Legal Office Services Manager II

Subject: Letter of Warning – Waste of County Time

Janine, we recently discussed during our July 29th bi-weekly meeting your excessive personal calls. It was brought to your attention that personal phone calls using county time and resources were not permitted. Subsequent to our meeting, in your email response, you also admitted to making personal long-distance calls on county phones. I recognize that you are aware of your part in this, have paid for the calls, and have stated your commitment to changing your conduct.

To summarize, a review of the Station Activity Report from 1/1/25 through 6/30/25 was conducted which indicates phone calls to Boston, Chicago, and Washington DC. These calls were determined to be of a personal nature and during business hours, which may have interfered with your obligation to carry out duties in a timely and effective manner. The combination of lengthy personal phone calls including long-distance calls as well as making them during work hours shows poor judgment and is a waste of County resources.

As a reminder, you are not to wear your Bluetooth during your work hours. Absent an emergency, you are expected to limit your personal calls, both incoming and outgoing, to break and meal periods.

It is each department's responsibility to ensure appropriate use of county resources. As a Legal Office Services Supervisor, you are expected to use good judgment in carrying out your duties and to set an example for others within the department demonstrating behavior that is above reproach.

I sincerely hope that you will address this issue in a positive manner.

cc: Supervisory File

Sample Letter of Reprimand for Discourtesy

– PRINT ON DEPARTMENTAL LETTERHEAD –

Date:

To: Supervisor

From: Manager

Subject: Letter of Reprimand

This is an official Letter of Reprimand for Discourtesy.

On (date), while in a public forum, you raised your voice towards one of your direct reports. This is unprofessional and will not be tolerated from a supervisor. In addition to staff reporting this incident to me, a patient reported that they were upset by how you treated the employee.

You advised me that you were not pleased with this employee and that you did raise your voice because you felt that was the only way to get through to this employee. This behavior will not be tolerated under any circumstances.

This Letter of Reprimand comes after I have counseled you on this type of behavior before. I have asked that if you need to counsel an employee you take that employee out of the general work area to a more private office to conduct your conversations, and you are not to raise your voice. I have advised you that your conduct is unacceptable, yet it continues. Any further instance of misconduct will lead to disciplinary action, up to and including dismissal.

I am directing you to take (COUNTY TRAINING COURSE) to support your supervisory skills.

I am also making a job performance referral for you to the Employee Assistance Program (EAP), administered by Claremont EAP. They may assist you in resolving any personal difficulties that may be affecting your work. I encourage you to take advantage of this referral by calling Claremont EAP at 1-800-834-3773.

A copy of this letter is being placed in your Civil Service and Departmental personnel files. You may respond in writing to this letter. Should you choose to do so, that response will be made a part of these personnel files.

Sincerely,

Supervisor

Title

cc: Department Head
Manager, Title
Rocio Kiryczun, Director, Human Resources Department
Employee & Labor Relations Representative
Civil Service and Departmental Personnel Files

Sample Skelly Intent Letter – Conduct (Non-Punitive Discipline)

– PRINT ON YOUR DEPARTMENTAL LETTERHEAD –

Date

Employee Name

Classification

(Hand-delivered)

Dear Ms. Employee:

Please take notice that it is the intent of this office to issue you a disciplinary letter equating to a thirty-day suspension. Although you will not miss work or have your pay docked, this non-punitive disciplinary action carries the weight, in terms of progressive discipline, as if you had been actually suspended without pay. The grounds upon which this disciplinary action is being proposed are in accordance with Section 4 of Civil Service Commission Rule XIII as follows:

G. Through willful misconduct, causing damage to public property or waste of public supplies, or waste of public time.

I. Insubordination. Insubordination shall mean that the employee, having then the ability to do a reasonable act which they are directed to do by an officer or employee of the County with authority to direct his/her activities on the job, willfully fails or neglects to perform the directed act.

(Other) Misuse of the Internet to access website of a sexual nature.

You used County equipment to access Internet websites of a sexual nature. During a check by the Information Services Department, it was found that you accessed 239 sexually oriented websites during the four days your usage was monitored. It was also determined that this access was done during work hours. This constitutes a waste of public time.

In September 2025 a complaint of sexual harassment was filed against you by a coworker. This complaint was investigated and substantiated. As a result, the County Equal Employment Manager, and your manager, (name) met with you in October 2025 and directed you not to engage in any further acts of sexual harassment. In that meeting Mr. X also stated that sex in any form is not appropriate in the workplace. Within three months of this directive, it was discovered that you were accessing websites of a sexual nature at work. This is a direct violation of your manager's directive to you and constitutes insubordination.

In addition to being an act of insubordination, your conduct also created potential liability for another claim of sexual harassment. A coworker could have observed and been offended by the material you were viewing on your computer. In light of the prior incident of sexual harassment, this could constitute a hostile work environment and could have led to a lawsuit or formal complaint to the EEOC or FEHA.

All written materials, reports, and documents upon which this action is based are available to you for your review by contacting me. You will further take notice that you have the right to respond either orally or in

writing, or both, to the facts contained in this letter. If you wish to respond in writing, your response must be received in this office no later than (approximately 7 working days later). If you wish to respond orally, you must contact (Skelly Hearing Officer) (650) XXX-XXXX by (approximately 4 working days later) to arrange a meeting to be held by (approximately 7 working days later). If you do not contact Ms. XX or provide a written response by the above dates, it will be assumed that you have waived this right. You have the right to be represented by your union in this matter.

I am making a direct management referral to the Employee Assistance Program (EAP) for you. The EAP phone number is 1-800-834-3773 and you may use the visits on County time on a pre-approved basis.

Sincerely,

First Line Manager, Title

cc: Department Head
Next Level Manager
Rocio Kiryczun, Director, Human Resources Department
Employee & Labor Relations
Civil Service and Departmental Files

Sample Skelly Decision Letter – Conduct (Non-Punitive Discipline)

– PRINT ON YOUR DEPARTMENTAL LETTERHEAD –

Date

Employee Name

Classification

(Hand-delivered)

Dear Ms. Employee:

Please take notice that you are issued this disciplinary letter that equates to a thirty-day suspension. Although you will not miss work or have your pay docked, this non-punitive disciplinary action carries the weight, in terms of progressive discipline, as if you had been actually suspended without pay. The grounds upon which this disciplinary action is being taken are in accordance with Section 4 of Civil Service Commission Rule XIII as follows:

G. Through willful misconduct, causing damage to public property or waste of public supplies, or waste of public time.

I. Insubordination. Insubordination shall mean that the employee, having then the ability to do a reasonable act which they are directed to do by an officer or employee of the County with authority to direct his/her activities on the job, willfully fails or neglects to perform the directed act.

(Other) Misuse of the Internet to access website of a sexual nature.

You used County equipment to access Internet websites of a sexual nature. During a check by the Information Services Department, it was found that you accessed 239 sexually oriented websites during the four days your usage was monitored. It was also determined that this access was done during work hours. This constitutes a waste of public time.

In September 2025 a complaint of sexual harassment was filed against you by a coworker. This complaint was investigated and substantiated. As a result, the County Equal Employment Manager, and your manager, (name) met with you in October 2025 and directed you not to engage in any further acts of sexual harassment. In that meeting Mr. X also stated that sex in any form is not appropriate in the workplace. Within three months of this directive, it was discovered that you were accessing websites of a sexual nature at work. This is a direct violation of your manager's directive to you and constitutes insubordination.

In addition to being an act of insubordination, your conduct also created potential liability for another claim of sexual harassment. A coworker could have observed and been offended by the material you were viewing on your computer. You are required to attend the "Harassment and Sexual Harassment in the Workplace" training on (date) from (time to time).

A direct referral was made to the Employee Assistance Program (EAP) on your behalf. The EAP phone number is (650) XXX-XXXX and you may attend on County time. These services can assist you with any personal difficulties you may be experiencing.

Summary

In taking this disciplinary action, the following factors were taken into consideration:

As a (Classification) you are in a lead position and are expected to serve as a role model for trainee and journey level workers. Additionally, you have previously received a 15-day non-punitive suspension for a substantiated complaint of sexual harassment filed against you.

When interviewed, you readily admitted to accessing sexually oriented sites on County equipment and during work hours. You offered no acceptable excuse for this conduct, but your honesty and remorse during the interview process are seen as mitigating factors.

You have a good employment record. This is also seen as a mitigating factor.

In that you did not submit a written or oral reply to the intent letter issued on (date), it is assumed that you have waived that right. It is therefore my decision to sustain the proposed 30-day non-punitive suspension.

I want to make it clear that any further instance of misconduct will lead to disciplinary action, up to and including dismissal from County service.

Sincerely,

Deciding Official, Title

cc: Department Head
First Line Manager
Rocio Kiryczun, Director, Human Resources Department
Employee & Labor Relations
Civil Service and Departmental Files

Sample Skelly Letter of Intent - Dismissal

– PRINT ON YOUR DEPARTMENTAL LETTERHEAD –

Date

Employee, Classification

Home Address OR Hand-Delivered whenever Possible

Dear Mr. Employee:

Please take notice that it is the intent of this office to dismiss you from your position of (Classification) effective (approximately 10 days from date of letter). The grounds upon which this dismissal action is being proposed are in accordance with Section 4 of Civil Service Commission Rule XIII as follows:

A. Absence Without Leave. Absence without leave shall mean any time an employee is absent from the workplace without authorization or without an explanation satisfactory to the appointing authority. This includes an employee's failure to report to work after a leave of absence has expired or after such leave of absence has been disapproved or revoked.

C. Dishonesty or any act contrary to commonly accepted standards of justice.

It has recently been discovered that you have been leaving work early, before the end of your assigned shift. Specifically, you were observed by security leaving at the following times:

June 21 – left building at 12:15 a.m. entered your vehicle and remained there until 1:00 a.m.

June 23 – left at 12:24 a.m.

June 26 – left the building at 12:20 a.m., entered your vehicle then drove off campus at 12:50 a.m.

June 27 – entered your vehicle at 12:20 a.m. then left campus at 1:00 a.m.

June 28 – entered your vehicle at 12:20 a.m. then left campus at 12:55 a.m.

Your assigned shift ends at 1:00 a.m. On each of the above dates, your timecard reflected that you had worked your entire shift. Your absences constitute Absence Without Leave. The false entries on your timecard constitute Dishonesty and also constitute an attempt to defraud the County.

On (date) X, your supervisor, along with X interviewed you regarding the above issues. In answer to their questions as to what time you left the building on specific dates, you responded that you left at 12:50, the same as everyone else. Regarding other dates, you said you left at 1:00 a.m., or that you left at the same time as everyone else. X and X also asked you about leaving the building early and sitting in your vehicle for a period of time prior to the end of your shift at 1:00 a.m. You responded that you were “doing something in the van but can’t remember what”. Based on reports filed by security, your supervisor advised you that he had reason to believe that you had not left the building at the times you indicated.

Your supervisor provided you the opportunity to change your answers and asked if you would like to change any of your answers. You said “No.” The report from security is quite specific and contradicts

many of your answers. Your failure to answer the questions posed to you during this investigatory interview constitutes another act of Dishonesty.

In proposing this action, I am taking into consideration the non-punitive disciplinary action equating to a 15-day suspension recently issued to you for Dishonesty. That action was the result of untruthful statements to your supervisor and myself regarding your second job. In the letter issued to you on (date) I advised you that dishonesty normally results in dismissal but that, based on your remorse and length of service, I had decided to issue a disciplinary letter equating to a 15-day suspension rather than dismissing you from employment. In that letter I stated, "Please be advised that any further acts of dishonesty will result in dismissal from County employment." Now, one month after that letter, you have left work early and lied about it in the investigatory interview. You have broken trust with your supervisor and myself and I have no alternative but to dismiss you.

All written materials, reports and documents upon which this action is based are available to you for your review by contacting me. You will further take notice that you have the right to respond either orally or in writing, or both, to the facts contained in this letter. If you wish to respond in writing, your response must be received in this office no later than (approximately 7 working days later). If you wish to respond orally, you must contact (Skelly Hearing Officer) (650) 573-XXXX by (approximately 4 working days later) to arrange a meeting to be held by (approximately 7 working days later). If you do not contact Ms. XX or provide a written response by the above dates, it will be assumed that you have waived this right.

You have the right to be represented by your union in this matter.

Sincerely,

First Line Manager, Title

cc: Department Head
Next Level Manager
Rocio Kiryczun, Director, Human Resources Department
Employee & Labor Relations
Civil Service and Departmental Files

Sample Skelly Decision Letter – Dismissal

– PRINT ON YOUR DEPARTMENTAL LETTERHEAD –

Date

Employee, Classification

Home Address OR Hand-delivered Whenever Possible

Home Address

Dear Mr. Employee:

Please take notice that you are dismissed from your position of (Classification) effective today, (date). The grounds upon which this dismissal action is being taken are in accordance with Section 4 of Civil Service Commission Rule XIII as follows:

Absence Without Leave. Absence without leave shall mean any time an employee is absent from the workplace without authorization or without an explanation satisfactory to the appointing authority. This includes an employee's failure to report to work after a leave of absence has expired or after such leave of absence has been disapproved or revoked.

C. Dishonesty or any act contrary to commonly accepted standards of justice.

It has recently been discovered that you have been leaving work early, before the end of your assigned shift. Specifically, you were observed by security leaving at the following times:

June 21 – left building at 12:15 a.m. entered your vehicle and remained there until 1:00 a.m.

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Your assigned shift ends at 1:00 a.m. On each of the above dates, your timecard reflected that you had worked your entire shift. Your absences constitute Absence Without Leave. The false entries on your timecard constitute Dishonesty and also constitute an attempt to defraud the County.

On (date) X, your supervisor, along with X interviewed you regarding the above issues. In answer to their questions as to what time you left the building on specific dates, you responded that you left at 12:50, the same as everyone else. Regarding other dates, you said you left at 1:00 a.m., or that you left at the same time as everyone else. X and X also asked you about leaving the building early and sitting in your vehicle for a period of time prior to the end of your shift at 1:00 a.m. You responded that you were “doing something in the van but can’t remember what.” Based on reports filed by security, your supervisor advised you that he had reason to believe that you had not left the building at the times you indicated.

Your supervisor provided you the opportunity to change your answers and asked if you would like to change any of your answers. You said “No.” The report from security is quite specific and contradicts many of your answers. Your failure to answer the questions posed to you during this investigatory interview constitutes another act of Dishonesty.

In taking this action, I am taking into consideration the non-punitive disciplinary action equating to a 15-day suspension recently issued to you for Dishonesty. That action was the result of untruthful statements to your supervisor and myself regarding your second job. In the letter issued to you on (date) I advised you that dishonesty normally results in dismissal but that, based on your remorse and length of service, I had decided to issue a disciplinary letter equating to a 15-day suspension rather than dismissing you from employment. In that letter I stated, “Please be advised that any further acts of dishonesty will result in dismissal from County employment.” Now, one month after that letter, you have left work early and lied about it in the investigatory interview. You have broken trust with your supervisor and myself and I have no alternative but to dismiss you.

On (date) I met with you and your union representative to hear your reply to the charges in the letter proposing your dismissal. In that meeting, you made the following points:

It was a long-standing practice for staff to leave early if they finished their work. You also said you did not understand that this practice was no longer acceptable. As you know, the prior supervisors who may have condoned this practice no longer work for the County. One (Classification) was also dismissed for falsifying his timecards. You were caught leaving early and were advised it was unacceptable and must stop. In a staff meeting, written expectations were discussed. One of these expectations covered the issue of working one’s complete shift. I find your statement that you did not know that this practice was no longer acceptable to lack credibility.

You said you missed your breaks and meal period on the days in question. You also said that there were many calls for your services on the nights in question and you had worked very hard. Night shift (Classification) work a straight 8-hour shift with a paid meal break. Based on your statement, I will review this policy to determine if the shift should be extended with a paid meal break. However, missing a paid meal break does not allow you to leave early.

You did not leave the campus early, you merely left the building and sat in your van. By leaving the building, you were abandoning your post. Furthermore, on at least three of the above occasions, you left the campus early as well. It should be noted that security only observed the parking lot on the five dates noted above, and you left the building early on all five occasions.

I reviewed you case again with your supervisor and managers. They have presented to me evidence that you were informed of the policy that leaving work early is not permitted. In our interview August 1, you told me that your manager did not speak to staff setting forth the policy about leaving early. Yet you signed an attendance sheet on May 16, 2000, of the staff meeting where this policy was clearly discussed (attached). I must therefore assume your early departures on the dates noted were done with full knowledge that it was against County policy.

Therefore, in light of the evidence I have reviewed and the fact that you continued to violate a County policy that your manager had informed you of, I must uphold the recommendation to dismiss you from your position as a (Classification).

Sincerely,

Deciding Official, Title

cc: Department Head
First Line Manager
Rocio Kiryczun, Director, Human Resources Department
Employee & Labor Relations
Civil Service and Departmental Files

8. CONDUCTING EMPLOYEE INVESTIGATIONS

You will not personally witness every act of misconduct alleged to have been committed by your employees. Allegations of employee misconduct can come from a variety of sources. The two most likely sources of reports/complaints of misconduct are co-workers and the public. For example, one employee may report that she saw another employee shopping during work hours, or a member of the public may complain that an employee was rude. How you respond to complaints like these could make the difference between a prompt and effective resolution or expensive litigation. You will need to investigate these types of allegations to determine if they are true and, if so, what action to take.

The key to a successful investigation is to approach each complaint in an organized and consistent manner. Failing to act, or improperly investigating can greatly increase your legal risks. At a minimum, effective investigations demonstrate that you acted fairly and in good faith.

If there is an allegation of potential criminal actions, contact the County Attorney's Office to discuss whether there should be a report to the District Attorney's Office or other law enforcement agency.

In all other cases where there is an allegation of serious (but not criminal) misconduct, contact Employee & Labor Relations for assistance in planning the investigation. Please see [Sample Interview Questions](#).

When you receive a complaint about alleged misconduct, you are expected to conduct a complete, timely, and unbiased investigation. The goal of the investigation is to gather information so you can decide how to respond appropriately to an employee's complaint. Please use the following guidance to assist you in conducting investigations.

A. What is the supervisor's responsibility in the area of employee investigations?

Receive the Complaint

Explain procedures. Tell the complainant that the matter will be promptly investigated and explain your procedures for investigation. Mention that someone else may interview the employee later to obtain additional information. Advise them that there will be no retaliation for coming forward with a complaint made in good faith and tell them to report any perceived retaliation immediately.

Discuss confidentiality. It is important not to promise confidentiality. But explain that the investigation will be handled as discreetly as possible, and information will be disclosed only on a "need to know" basis.

Written complaint. If the employee would like to provide a written complaint, that can initiate the investigation. The complaint should be written out before you begin the investigation because the employee's description of the problem will determine how you proceed with the investigation.

Employee's own words. It is best to have the employee explain the concern in their own words. You want the employee's best recollection of the facts, not what other people remember.

Review complaint. After the employee has written out the complaint, or discussed the complaint with you, go over it with the employee to make sure you understand the concern. Verify that the information is complete and accurate.

Plan the Investigation

The first step in conducting any investigation is to develop a plan. Who do you need to interview? What questions will you ask the complainant, the witnesses, and the alleged perpetrator? In what order should you conduct the interviews? What documents do you need to review? All of these questions should be answered before starting the actual investigation. It is strongly recommended that consult with your manager and Employee & Labor Relations prior to beginning the investigation, or in cases of alleged discrimination, harassment or sexual harassment, you will want to contact the County's Equal Employment Opportunity Manager.

The supervisor is responsible for documenting the allegation in as factual and complete a manner as possible, asking the source of the allegation such questions as:

- What occurred?
- Who was involved?
- When did it happen (time/date)?
- Where exactly did it take place?
- Were there any possible witnesses (oversee and/or overhear) to the event?
- Any other details pertinent to the complainant's observation of the event.

B. Should the employee be removed from the work area during the investigation?

In most circumstances, it is not necessary to do so. However, in some situations it may be appropriate for the accused employee to be away from the work location during the investigation. In determining whether to leave the accused employee in the work area, assign them to work at home, or to assign them to another location/set of duties, the following should be considered:

- Could the accused hinder the investigation by corrupting data or removing/destroying other evidence?
- Could the accused cause further harm if left in their current position? (e.g., a Social Worker accused of inappropriate behavior with a child)
- Is the accused a potential danger to others?
- Are there other governing agency requirements? (e.g., State requirement to remove a health care employee accused of abuse)
- Has the employee made statements or exhibited behavior which disrupts operations, impacts the public, or adversely impacts coworkers' ability to perform their jobs?

In determining whether to assign an employee to work at a different location is appropriate, you should consider, in addition to the above criteria, the following factors:

- **The employee's length of service and work history** – Is there any history of dishonesty, theft, violent or aggressive behavior, or a tendency to be disruptive?
- **The employee's behavior and conduct when confronted and interviewed about the conduct leading to the investigation** – Was the employee cooperative, composed and calm during the interview or did they become angry, loud, and defensive?

Contact Employee & Labor Relations or County Attorney for assistance in determining if an "Assignment to Work at an Alternate Location" is appropriate in this situation. If so, the employee's timecard will be coded as 001 while they are on this assignment. [Please see sample Assignment to Work at an Alternate Location letter.](#)

C. What is the supervisor's responsibility if the workplace allegation involves potential criminal action?

Document the allegation accurately and completely. Take careful, legible notes of what the complainant says, your own follow-up questions, and the answers to these questions. Immediately notify your manager and County Attorney. The County Attorney's Office will decide if there should be a report to the District Attorney's Office or other law enforcement agency. If you are unsure whether the allegation involves potential criminal action, contact the County Attorney's Office for guidance. It is County policy to report suspected criminal conduct to the appropriate law enforcement agency. The District Attorney's Office will determine whether to conduct a criminal investigation.

County Attorney will coordinate with the District Attorney's Office when it is appropriate to proceed with the administrative investigation. The administrative investigation will be held in abeyance pending a law enforcement investigation, so your investigation does not hinder the law enforcement investigation. Allowing the law enforcement investigation to proceed without interference will assist you with planning the administrative investigation.

D. What is the supervisor's responsibility when the alleged misconduct is of a non-criminal nature?

In all other cases where there is an allegation of serious (but not criminal) misconduct, the County Executive expects you to contact Employee & Labor Relations for assistance in planning the investigation. Since any disciplinary action that results from the investigation can lead to an appeal to the Civil Service Commission, arbitration, a discrimination complaint with EEOC or DFEH, or a lawsuit, it is imperative that the investigation be conducted as promptly, thoroughly, and professionally as possible. After getting the initial information, the supervisor should:

Contact Employee & Labor Relations for guidance on planning the investigation. They will work with you to:

1. Develop a list of questions or issues that need to be answered in order to fully investigate the allegation.
2. Make a list of potential witnesses who may help answer those questions.
3. Make a list of documents (e.g., timecards, work products, written policies) to be reviewed. For instance, if it is alleged that an employee used a County car for personal use after hours, you should review the employee's timecard and overtime request to determine whether they worked overtime that day.
4. The next step is usually to interview the employee who is the subject of the allegation. This may not always be the best strategy, and your initial consultation with Employee & Labor Relations will cover this aspect of your investigative plan.

Note: The employee who is the subject of the allegation, and any other employees you interview as witnesses, have a right to union representation if they request it.

5. Maintain a legible and orderly file of all materials assembled during the investigation. This includes your interview notes, documents reviewed, and any written statements from the complainant or witnesses. This file, known as the investigatory file, will form the basis for any disciplinary action that may result from the investigation and will be relied on to support any such action. Do not file your investigatory materials in employees' supervisory files.

Get the Facts

In the investigation, you will need to separate allegations from facts. You will need to identify what further testimony or data you will need to determine which, if any, allegations are true. The following will help in this crucial stage of the investigation:

- **Get specific charges:** Make sure the charges are specific. Where (what room or what part of the room), when (date and time) and how did the alleged misconduct/harassment occur? What exactly did the person do or say? Who else was present who may have seen or heard the alleged misconduct/sexual harassment? Seek full answers to questions and remain neutral throughout the interview stage of the process. Inform the complainant that they are expected to keep this information and discussion confidential, that the complaint will be handled as discretely as possible, and to tell you immediately if they believe there has been any form of retaliation made for them coming forward with a complaint.
- **Isolate witnesses:** If there are witnesses to the alleged misconduct or harassment, interview the complainant and witnesses in such a manner that they cannot converse between the interviews (e.g., conduct interviews immediately following one another). If witnesses give short, yes and no answers, ask open-ended questions. For example, if the witness answers "yes" to a question about whether they witnessed sexual harassment, a good follow-up question would be, "What did you witness?" Take detailed notes during all interviews and ask follow-up questions depending on the answers you receive. It is a good idea to read back or summarize each person's statements at the end of the interview and ask if they have anything else to add. Although you cannot promise confidentiality, you can state that you will conduct the investigation as discretely as possible. Inform each witness that they are expected to keep the

subject matter confidential, and to immediately inform you if there has been any retaliation as a result of being interviewed.

If someone won't cooperate, point out that you will base your decisions on the information you have on hand and you won't have the benefit of their version of the story.

During the interviews, take detailed notes of the questions asked and the person's responses. Since these notes may have to be disclosed in the event of discipline being issued, a lawsuit or grievance, be sure to keep them factual and free of personal opinions.

- **Interview the alleged perpetrator:** Make sure the individual knows that they have been accused of misconduct/harassment and that you are conducting an investigation to see if the allegations are true. Tell them what they have been accused of and ask for their side of the story. The interview should be conducted in a neutral, professional manner. Your role in interviewing the alleged perpetrator is not to prove them guilty, but to find out if they actually committed the misconduct/harassment they have been accused of. Resist the temptation to talk too much, add your own views/opinions, or ask leading questions. Inform the employee of the importance of honesty in answering the questions, and that they are expected to keep the subject matter of the interview confidential. Inform the employee that there is to be no retaliation towards anyone as a result of this concern being brought forward.

E. What if the allegation involves potential criminal activity away from work?

It is essential that supervisors and managers contact the County Attorney's Office as soon as they become aware of an allegation that involves potential criminal action outside the workplace. If you are unsure whether the allegation involves potential criminal action, contact the County Attorney's Office for guidance.

Occasionally, a manager or supervisor learns that one of their employees has been arrested. Sometimes this information comes directly from the arresting agency, sometimes it is reported by a coworker or member of the public, and sometimes the employee reports the arrest. When you learn about an arrest, you should immediately contact the County Attorney's Office and Employee & Labor Relations for assistance in discussing whether and how to conduct an investigation.

If there is an arrest, you can, and should, investigate the underlying conduct that led to the arrest to determine whether disciplinary action based on the underlying conduct is warranted. This must be distinguished from using the fact of the arrest itself, or the police record of the arrest, to take an employment action, which generally is not permissible. California Labor Code section 432.7(a) provides that, an employer may not use "any record of arrest or detention that did not result in conviction" as a factor in determining any condition of employment, including the decision to hire or terminate. Thus, an investigation of the facts themselves (as opposed to the arrest itself) is necessary to determine if any action is warranted. Contact the County Attorney's Office and Employee & Labor Relations for guidance. The inquiry will focus on the nature of the conduct to determine whether it has any connection to the employee's job duties.

Convictions

The County’s policy on Reporting Convictions is as follows:

Any County employee who is convicted of a felony or a misdemeanor, or placed on parole or probation subsequent to employment must report such conviction, parole or probation to Employee & Labor Relations within 72 hours of the conviction, or of being placed on parole or probation. A conviction will not necessarily result in disciplinary action. Each conviction will be reviewed/investigated to determine if disciplinary action is warranted. Failure to report a conviction within 72 hours of the conviction will result in disciplinary action, up to and including dismissal, absent an explanation of the failure to report which is satisfactory to the appointing authority.

The District Attorney’s Office will notify Employee & Labor Relations of any San Mateo County convictions of County employees.

F. Is the employee entitled to Union representation during administrative interviews?

Any time you are interviewing a represented employee in conjunction with an investigation, the employee has the right to union representation if they request it. This is known as the Weingarten right. Whenever an employee is required to meet with a supervisor and the employee reasonably anticipates that such a meeting will involve questioning leading to disciplinary action, they shall be entitled to have a Steward/union representative present if they so request. It is not the intention of this provision to allow the presence of a Steward/union representative during the initial discussions of an employee’s performance evaluation.

This language is contained in all MOUs with employee organizations in the County, but what does it mean? Let’s break it down to get a clearer look at it:

1. **The employee is required to meet.** This is clear. When you indicate that you want the employee to come to your office at a certain time, you have required the employee to meet with you. Note that this right also extends to any employee you are interviewing as a witness as part of an investigation.
2. **The employee reasonably anticipates that such a meeting will involve questioning.** Not every meeting involves questioning. You may tell the employee you wish to meet to give him or her a document (i.e., a letter of counseling/warning/ reprimand) and that there will be no questioning. You may wish simply to counsel the employee or give him/her your observation about something. If you tell the employee up front that there will be no questioning, then the employee cannot reasonably anticipate that it will occur.
3. **Questioning leading to disciplinary action.** This section is interpreted in the most general sense, that is, the employee can reasonably expect discipline as the result of any meeting in which she or he will be questioned. As in all Employee & Labor Relations issues, it is important to be fair and honest. If you want to meet with an employee about something, be clear with the employee about the nature of the meeting. If the matter you wish to discuss with the employee

may lead to disciplinary action, depending on the employee's responses, make sure the employee is afforded the opportunity to have the Steward there.

4. **They shall be entitled to have a Union Steward/Representative present.** The manager should try to schedule the meeting with enough advance notice to give the employee an opportunity to obtain a Union Steward or union representative. In doing so, there are two things to consider. First, it is a manager's responsibility to conduct the investigation and get the employee's point of view as quickly as possible so that any appropriate action can be taken. Second, it is the employee's right to have a Union Steward present. The practical course of action here is to give the employee a few alternative dates and times (two or three) a few days in advance. This is a fair way to balance the needs of both management and employees. However, if the steward is not available even though you have given the employee several options for meeting times, you are not restricted from meeting with the employee. On some occasions, employees have refused to meet with management unless a particular steward or representative is present. Since Unions have more than one representative serving their unit, it is not reasonable that a meeting be delayed due to one person's unavailability. Your reasonable attempts should be documented in the file for future reference.
5. **If they so requests.** It is the employee's responsibility to request representation; it is not the manager or supervisor's responsibility to inform the employee of this right.

G. What is the investigatory file used for?

The materials in the file will be reviewed to determine whether there is sufficient proof to sustain the allegation and, if so, to determine what level of action should be taken. If disciplinary action is initiated as a result of the investigation, the file becomes the "material relied on" in taking the disciplinary action.

Once an employee receives the Skelly letter proposing discipline, they and the union have a right to obtain and/or review all of the materials which were "relied on" in proposing the action. It is critical that this material be assembled and copied prior to issuance of the intent letter so it can be given to the employee or union if they request it.

H. What is the manager's role in employee investigations?

Depending on the level of the employee alleged to have committed the misconduct and the nature of the alleged infraction, the manager may personally conduct the investigation, or may be a resource to the supervisor designated to conduct the investigation.

Analyze the Data – After gathering and sorting through the testimony and documentation, you are ready to analyze the information and draw conclusions. Wait until the investigation is completed before making any findings or conclusions. Do the witnesses agree as to the time and place? Do they agree about what was said or done? Are the witnesses credible? Have there been past conflicts between the individual making the accusation and the alleged perpetrator? Between the witnesses and alleged perpetrator? In this stage, you will want to consult with Employee & Labor Relations to determine whether there is sufficient proof of guilt on the part of the alleged perpetrator to warrant further action. The burden of proof is "more likely than not" that the misbehavior occurred.

Determine What Action to Take – If you find sufficient proof that the alleged perpetrator is guilty of misconduct or sexual harassment, you will need to determine the appropriate level of corrective/disciplinary action. If you do not find sufficient proof, or find no proof, a warning or closing letter may be appropriate depending on the circumstances. You will want to consult with Employee & Labor Relations and County Attorney to determine what action, if any, to take.

Conducting any investigation is difficult and time-consuming. Investigating allegations made by one employee against another, particularly an allegation of sexual harassment, is particularly sensitive. As always, if you have any questions or are concerned about how to proceed with such an investigation, please contact either the Employee & Labor Relations Division or the Equal Employment Opportunity Manager for assistance.

I. What do I do if I suspect that an employee is under the influence of alcohol or drugs while at work?

Follow these recommended steps if you suspect that an employee is under the influence of alcohol or drugs while at work. Listed below are recommended steps to follow:

1. First, annotate your observations. Please use the [Objective Signs of Impairment Checklist](#) for this purpose.
2. Next, ask another manager/supervisor to observe the employee and complete a checklist without reviewing the checklist you have completed. In this way, you have two independent observations of the employee.
3. If the other manager/supervisor concurs that the employee is impaired from performing their duties, you should send the employee home. Do not allow the employee to drive. You should have the employee call a friend or family member to drive them home or call and pay a taxi to take them home. Do not have an employee drive them home.
4. When the employee returns to work, conduct an investigative interview. Ask the employee if they were under the influence of alcohol or drugs. If they acknowledge that they were under the influence, ask why they came to work in that condition. If the employee denies being under the influence, show them the checklist and ask for an explanation of the appearance/behavior you observed. Since this interview may lead to disciplinary action, the employee is entitled to union representation if they request it.
5. Once you have completed your investigation, call Employee & Labor Relations for guidance on the appropriate action to take.

Note: For employees covered under the Department of Transportation Drug and Alcohol Testing Program, follow the steps outlined in the Policies and Procedures for Supervisors and Managers provided in the Drug and Alcohol Testing Program training. For further information regarding the DOT program, contact the County’s Safety Manager.

J. What do I do if an employee makes a threat to me and/or to anyone else?

The County does not tolerate violence in the workplace. Refer to the County’s [Violence in the Workplace Policy](#) found on the County Intranet.

The safety and security of employees are of the highest priority to the organization. Threats of violence, threatening behavior, or acts of violence against employees, visitors, customers, vendors conducting business with the County, persons appearing on County-owned property seeking information or assistance from the County, or any person utilizing County facilities for public meetings will not be tolerated. The County is also committed to providing a workplace in which the perpetration of domestic violence is neither tolerated nor excused, as well as providing resources and support for employees and managers to address the occurrence and effects of domestic violence in the workplace.

Examples of violence may include but not limited to:

- Initiating physical combat or fighting through actions such as grabbing, pinching, or impeding, blocking or obstructing of movements, striking, punching, slapping, kicking, pushing, or any other threatening physical actions;
- Other acts by or against employees including stalking, challenging another person to physical combat or fight, or any other action or conduct that implies the threat of harm;
- Threatening communication, including mail, e-mail, telephone calls, faxes, gestures, drawings, writings, or verbal remarks.

All employees are responsible for maintaining a safe work environment.

Employees who make threats, exhibit threatening behavior, engage in violent acts against the life, health, well-being, family, or property of others while at work or at employer-sponsored events may be removed from the premises, may be subject to disciplinary action up to and including termination, and may be subject to criminal penalties, or all of these actions.

The act or threat may, in and of itself, constitute grounds for dismissal regardless of whether or not the perpetrator intended to carry out the threat.

Workplace violence is a serious issue; therefore, joking about violence or making false reports and unsubstantiated allegations about violence in the workplace will not be tolerated and will be treated as a violation of the County's policy. In addition, retaliation by employees against other employees who report violations of this County policy will not be tolerated. Employees who engage in such retaliation will be subject to disciplinary action, up to and including termination.

IMMINENT DANGER – This can be defined as immediate concerns about the safety of yourself and others.

Escape

1. Alert others
2. Dial 9-911 (outside line)
3. Notify Supervisor, Division or Department Director
4. Call Countywide Security, ext. 4400 (phone number 363-4400)
5. Contact Employee Relations

NON-EMERGENCY

- Notify Supervisor, Division or Department Director

- Contact Countywide Security ext. 4400 (phone number 363-4400)
- Contact Employee Relations

Employee Relations will coordinate with the Division/Department Director to convene the Workplace Violence Advisory Team as appropriate to plan the investigation. The Advisory Team consists of Department representatives, Sheriff's Office Countywide Security, Behavioral Health & Recovery Services, HR/Employee Relations, County Attorney, and the District Attorney's Office in cases of domestic violence. If local law enforcement is conducting a criminal investigation, consultation will be made through the Sheriff's Office on how to proceed with the administrative investigation. If there is a need to obtain a temporary restraining order against the perpetrator, that will be handled by County Attorney and the Sheriff's Office will coordinate the request for a temporary workplace restraining order.

Preventive measures include:

- Communicating the County's Workplace Violence Prevention Policy & Procedures to all employees.
- Providing periodic training on the County's Workplace Violence Prevention Policy & Procedures to all employees.
- Posting emergency phone numbers on all County Telephones
- Conducting periodic security checks conducted by Countywide Security

Each employee has a responsibility to treat all employees and others with whom they have employment contact respectfully. Further, employees are prohibited from threatening violence or taking violent action as outlined in the policy. It is the responsibility of any employee who feels that they have been the target of actual or threatened violence in the workplace or who has observed or otherwise learned of such conduct to immediately contact their supervisor, Human Resources, or Countywide Security. In cases where there is an imminent potential for violence, security or the local law enforcement agency should be contacted immediately. Survivors of domestic violence should talk with a trusted coworker, supervisor, union representative, or manager about the situation, strongly encouraged to contact the [County's Employee Assistance Program](#) at 1-800-834-3773 for other resources and advise the supervisor or manager if there is any concern about safety at work.

Report of Incident or Unsafe Condition

The County of San Mateo's Workplace Violence Prevention Plan (WVPP) addresses the hazards known to be associated with the four types of workplace violence as defined by Labor Code § 6401.9. The WVPP complements existing anti-violence policies by laying out more specifically the steps to identify, report, track, and analyze violent incidents to reduce the likelihood of re-occurrence. Download a copy of the WVPP from the County Intranet at: [https://smcgov.sharepoint.com/sites/safety-ergo/SitePages/Workplace-Violence-Prevention-Plan\(1\).aspx](https://smcgov.sharepoint.com/sites/safety-ergo/SitePages/Workplace-Violence-Prevention-Plan(1).aspx)

Reports of Workplace Violence or Unsafe Conditions can be reported:

- Workplace Violence Reporting Hotline: 1 (855) 387 2497
- Online: <https://secure.ethicspoint.com/domain/media/en/gui/55329/index.html>

Sample Interview Questions

Please note these sample questions do not take into account the unique aspects of any given situation and will undoubtedly need to be changed or added to for your particular investigation. Please contact your Employee & Labor Relations representative for assistance with question development. You will need to ask follow-up questions based on the employee’s responses to your prepared questions. Thus, you may find it helpful to team with your manager if the situation is complex and designate one person to be the primary note-taker while the other is the primary questioner.

If a represented employee, at **ANY** time during the interview, tells you that they want to have a union representative present during questioning, **STOP** the interview and either give the employee a chance to make arrangements, or identify a specific date/time to restart the interview. See [Section 17: Leaves of Absence](#) for more information regarding right to representation.

When starting off an interview, you will want to say:

- I need to ask you some questions about _____. It’s extremely important that you answer my questions truthfully and completely. Is there any reason why you cannot answer my questions truthfully and completely today?
- You are expected to keep this discussion confidential, and you are not to speak to coworkers or clients about the subject of this interview to protect the integrity of the investigation.
- Retaliation is taken very seriously and can lead to termination.
- You are expected to be honest and complete with your answers. Being dishonest in your answers can lead to disciplinary action, in and of itself.

Then proceed with your interview questions.

At the end of the interview, refrain from verbally counseling the employee, unless that is the level of corrective action you believe is warranted for the situation. More often you will want to remind the employee of the admonishments set forth above, and let the employee know you will be getting back to them as soon as possible with the outcome of the investigation, if anything, as a result of your investigation.

Alleged Internet and/or E-mail Misuse - Sample Interview Questions

1. What is your understanding of the County’s Internet policy?
2. How many times a day, on average, do you access the Internet?
3. How long, on average, do you stay on the Internet each time?
4. What types of sites have you accessed?
 - (If EE doesn’t mention sex/adult sites): Have any sites contained adult or sexual material?
5. One of our staff found inappropriate material in the printer that pertained to adult-oriented activities. It was generated under your password. What can you tell me about this?
 - (If EE asks when it happened): The website was accessed on (DATE) at (TIME).

- (If EE admits to it): What led up to your doing so? Why did you think it was okay to do that? Did you show it to anyone else in the office? Who else was around in your work area?
 - (If EE denies it): I want to remind you that it is crucial that you be honest in your answers. Please think about your usage and be sure to give me complete and truthful answers. The report clearly links your password to the website. How do you explain this, if it wasn't you who accessed the website?
 - (If EE says someone used their password/accessed their computer): What do you do to safeguard your password? What do you do to safeguard your computer when you're away from your desk? What are you supposed to be doing to safeguard them?
6. How are your actions inconsistent with the County's Internet Policy?
 7. Do you have anything you wish to add?

Alleged Discourtesy to Client – Sample Interview Questions

A client contacted me to complain about what she considers to have been inappropriate comments directed from you to her. This has to do with the client who (give a brief description).

1. Please walk me through what you recall took place with this client on Tuesday.
2. When she said she didn't know who the baby's father was, did you say: "What do you mean you don't know? How could you not know?"
 - (If EE denies it): Could you have said anything like that? Why do you think she would report that you said this to her?
3. Did the client ever ask if she could see someone rather than yourself?
4. What did you tell her?
 - (If EE doesn't say it): Did you tell her "I'm in charge here?"
 - (If EE denies it): Why do you think she'd say you told her this?
 - (If EE admits to it): What did you mean by that statement?
5. In light of our discussion, how do you think you could have handled that situation differently?
6. Is there anything else you want me to know?
7. What would be your recommendation as to how to remedy the situation?

Alleged Misuse of Position – Sample Interview Questions

1. NAME, talk with me about your experience with getting client bus passes from our department.
2. When did that first start?
3. How did it come about?
4. Have you gotten them every month since then? (If no: how often?)
5. How many do you receive at a time?
6. What do you use them for?
7. Do you recall asking NAME if she could provide bus passes to you for your children?
8. What did you say to NAME?
9. Did you tell her that you had been getting them from NAME?
10. How often had NAME provided bus passes to you? How many bus passes per month?

11. Do you know of anyone else who has obtained bus passes from NAME?
12. Do you remember telling NAME, "Oh come on, I bet you he sells them!"?
13. Has any other staff provided you with Department-issued bus passes?
14. Is there anything else you can tell me about this matter?
15. You need to inform me immediately if someone approaches you about the issue we just discussed.

Alleged Discourtesy to Coworker – Sample Interview Questions

1. I understand that you took several days off while I was on vacation. How about if you start with telling me which days you were here and which days you didn't work?
2. Did anything unusual occur on Friday (11/21)?
 - (If EE says "no"): Did you and NAME have some type of conversation regarding the fan?
3. What do you recall saying to NAME?
4. What do you recall NAME saying to you?
5. Did you say anything else after the two of you directly spoke with each other?
 - (If EE says "yes"): What did you say?
 - (If EE says "no", or gives you a very different version): It was reported that you were overheard saying, "She's such a \$%^&\$ @#\$%!"
 - (If EE still denies it): Why do you think people would report having heard this?
6. To whom were you speaking?
7. What were your intentions in saying this comment?
8. Why do you think your comment has caused concern?
9. How could you have handled the situation differently?
10. Is there anything else you want me to know?
11. What would be your recommendation as to how to remedy the situation?
12. What will you do if you have a future disagreement with a coworker?

Sample Assignment to Work at an Alternate Location Letter

Date

Name

Classification

Department

Dear Mr. Employee:

Subject: Temporary Assignment to Work at a Different Location

Effective immediately, you are temporarily assigned to work at home pending an investigation into alleged misconduct on your part. You are directed to remain at your home between the work hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, with a one-hour meal break from noon to 1:00 p.m. during which you are at liberty to leave your residence. You are directed to be available to be reached by telephone during the hours of 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m. If you are unable to be reached by telephone during those hours while on this assignment, the time that you are unavailable will be considered Absence without Leave (AWOL) and disciplinary action will be taken.

You will remain in this status until the investigation is completed, at which time you will be contacted with further directions. While you are on this assignment, you will continue to receive your normal pay and benefits.

Should you wish to conduct personal business away from your home or attend a medical appointment during the period you are assigned to work at home, please call me to let me know the day and hours to code to vacation or sick leave, as appropriate.

I want to remind you that the County has a firm no retaliation policy, and therefore you are instructed not to take any actions or make any statements that could be construed as retaliatory against anyone you believe may have been involved. You are also instructed not to attempt to influence or coerce anyone who may be a witness in this matter to provide false, misleading or incomplete testimony or information, and you are prohibited from concealing, altering, tampering with, or destroying any potential evidence related to the subject of this investigation. You are further directed to not access your work computer system while on this temporary assignment without receiving advance permission from me. Should you need to retrieve any personal belongings from the office, you are to call either me at (phone #) or WHO at X???? to arrange for any personal items to be sent to you.

Sincerely,

Manager

Title

cc: Department Head
Rocio Kiryczun, Director, Human Resources Department
Employee & Labor Relations
Civil Service and Department Personnel Files

Objective Signs of Impairment

Balance/Walking

- Normal
- Staggering
- Swaying
- Stumbling

Speech

- Unusually slow
- Unusually fast
- Angry

Other: _____

Appearance

- Normal
- Dilated pupils
- Sunglasses worn indoors
- Red eyes
- Dry mouth
- Shortness of breath
- Runny nose/sniffing
- Sweating
- Crying
- Flushed face/pale
- Odor of alcohol
- Odor of marijuana

Other: _____

Behavior

- Normal
- Sleepy
- Hostile
- Confused
- Moves slowly
- Involved in accidents
- Near miss of serious accident
- Wide mood swings
- Takes risks that endanger others
- Cannot control equipment
- Refuses to do assigned work
- Increased/repetitive errors
- Lack of concentration
- Waste of materials/damage to equipment
- Engages in arguments
- Verbal abusiveness
- Physical abusiveness
- Memory problems/losses
- Unexplained disappearances
- Long breaks or lunches

Other: _____

Physical Evidence/Miscellaneous Observations

- Alcohol
- Drugs (suspected)
- Drug paraphernalia

9. TARDINESS AND ABSENTEEISM

Correction of tardiness and absenteeism is one of the most complex and frustrating areas of Employee & Labor Relations for supervisors. Dealing with tardiness is an ongoing concern for supervisors and managers. If not dealt with promptly, excessive tardiness can adversely impact service to the public. If infrequent instances of minor tardiness are dealt with in an overly rigid and uncompassionate manner, employee morale can suffer.

This is the area in which a supervisor will have the greatest day-to-day involvement. It is also the area of Employee Relations where supervisors are most likely to ignore problems until they become chronic but is truly an area where prevention and early intervention is required.

There are many myths and misunderstandings about the rights and responsibilities of employees and supervisors regarding leave and it is essential that supervisors and managers clearly understand what these rights and responsibilities actually are.

Legislation such as the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA) have increased the complexity and confusion of leave administration. The County's FMLA Policy can be accessed at <http://hr.smcgov.org/fmla-cfra-leave-policy-and-medical-certification-form>

Like all other conduct issues, the key to avoiding problems is to set clear expectations and to address infractions firmly and fairly when they first occur. Tardiness and excessive absenteeism do not self-correct. If these problems are not addressed early on, they become ingrained behaviors and are viewed by employees as the accepted norm.

Any probationary employee exhibiting tardiness and/or absenteeism problems should be seriously considered for probationary rejection. Please contact your Employee & Labor Relations representative to discuss this option.

In this Section, we will try to provide practical advice on dealing with this complex issue in a direct and common-sense manner.

A. What can I do to avoid leave problems?

General Guidance

1. **Expectations** – The most important step you can take is to clearly communicate your expectations to staff. Supervisors must clearly communicate to employees that they are expected to be at their workstation, ready to work at the beginning of their assigned shift. Employees also need to know that they need to maintain regular and predictable attendance; that they need to return from breaks in a timely manner; and that they need to follow procedures for requesting and obtaining approval for time off in accordance with department procedures.

These expectations should be in writing either in the employee's performance standards or in a separate list of administrative expectations. The expectation should clearly state that instances of tardiness may result in the time being charged to accrued leave, leave without pay, or absence without leave, depending on the circumstances.

Supervisors should reinforce this written expectation through oral discussions with new employees in the first few days of employment, and in group discussions with all employees annually.

2. **Modeling** – Managers and supervisors must serve as positive role models in all areas of attendance.
3. **Recording Tardiness on Timecards** – As mentioned above, the initial instance of tardiness, or infrequent instances of tardiness which do not impact service delivery or coworkers, can be addressed by letting the employee make up the time and need not be recorded on the timecard. More frequent instances of tardiness, or tardiness which affects customers or coworkers, should be charged to accrued leave, leave without pay, or absence without leave.
4. **Tardiness of Less than Six Minutes** – The County's payroll system (ATKS) computes payroll in increments of six minutes (1.9 hours, 2.0 hours, 2.1 hours, etc.), with 0.1 hours equaling six minutes. This being the case, some employees will assert that leave cannot be charged for a tardiness that is under six minutes. This is not true. Once an employee has been counseled and advised that future tardiness will result in charges to their leave balance or absence without pay, a sub-six-minute tardiness may be recorded on the timecard by having the employee not begin work until the next six-minute increment of time has started.

For example, if an employee's shift begins at 8:00 a.m. and they arrive to work late, at 8:03, the supervisor can direct the employee to not start performing their work duties until 8:06, and charge 0.1 hours of leave/absence without pay in ATKS.

In setting and communicating leave expectations, you need to be prepared to answer the following:

Tardiness

- Everyone is late occasionally – how often is too often? Is it OK to be late once a week, once a month, once a quarter?
- What happens if I'm a few minutes late? At what point does a "few minutes" become a problem?
- If I am late, how do I code my timecard?
- Can I skip a break or take a shorter lunch to make up a fifteen-minute tardy? Can I make it up at the end of the day? Do I have to use vacation time?
- At what point do you charge a tardy as Absence without Leave (AWOL)?
- If I call the Lead or leave a message before work starts, does that count as approval?

Sick Leave

- If I wake up and am too sick to come to work, by what time am I expected to call in? Who should I call? Is it acceptable to leave a message on voice mail? If I leave a message, do I have to leave a number where I can be reached if necessary?
- When do I have to submit a physician's statement?

Vacation

- How far in advance do you expect me to request vacation time off? Is this expectation the same for a two-week vacation as for one day off?
- How many employees can be off on the same day?
- Do I have to put requests for days off in writing?
- Who can approve my request?

Once you have asked yourself these questions and formulated your answers, you should discuss the matter with your manager and with Employee & Labor Relations to ensure that your expectations are reasonable and in conformance with any pertinent MOUs, department or County policies and state and federal law. You can then reduce the expectations to writing to present to and discuss with staff.

Scenarios and Recommended Action Steps

Scenario I – George is a Fiscal Office Assistant II who works from 8:00 - 5:00 with a one-hour lunch. George drives his children to childcare in the morning and is 5-10 minutes late about twice a month. George's tardiness does not have an adverse impact of service delivery or on his ability to complete his workload.

Recommended Action – There are two alternatives which should work in George's case. As long as the instances of tardiness remain infrequent, you could allow George to make up the 5-10 minutes by extending his workday by the length of the tardiness on those days he is late. Alternatively, if office coverage permits, you could allow George to change his work hours by starting at 8:15 or 8:30 and either reducing his lunch to 30 or 45 minutes or extending his workday to 5:15 or 5:30.

Scenario II – Jane is a Benefits Analyst who comes in between thirty minutes - two hours late approximately once a month. Jane usually cites automobile problems or traffic as the reason for her tardiness. Jane's tardiness results in client interviews having to be reassigned to other employees or in clients having their interviews rescheduled. Jane's supervisor has counseled her about tardiness on three occasions but has not issued any written warning.

Recommended Action – The nature of Jane's work and the nature of her tardiness do not lend themselves to adjusting her work schedule or allowing her to make up the time. Jane's tardiness must be corrected, and it is obvious that verbal counseling has not solved the problem. At this point, the supervisor needs to document the problem in writing to Jane. Employee & Labor Relations can be contacted to assist with drafting the counseling memo. The supervisor should advise Jane that they are available to assist her in resolving the problem, but that ultimately it is

Jane's responsibility for getting to work on time. The supervisor should also state that continued tardiness will not be tolerated, and that recurrences will result in disciplinary action.

Scenario III – Judy is a Planner II who has worked for the County for six years. Judy is frequently tardy ranging from a few minutes to several hours. Although you have only been Judy's supervisor for the past eight months, it is your understanding that this has been a long-standing problem. There is no documentation in Judy's file and no reference to tardiness in past performance evaluations. Over the past six months, you have counseled Judy verbally and then in writing regarding her tardiness, and last month you gave Judy a formal letter of reprimand. Today, Judy arrived for work forty-five minutes late. When you asked her about it, she started to cry and accused you of harassing her. Judy then said that your harassment had given her a headache and that she was ill and needed to go home.

Recommended Action – First, you should advise Judy that discussing her tardiness does not constitute harassment but if she is truly too ill to remain at work, you will approve sick leave for the remainder of the day. You should also tell her that, upon her return the next day you will meet with her to discuss the situation. On her return, you should ask Judy why she was late. You should take careful notes of Judy's response and advise her that you will consider her statements before determining what action to take. You should then discuss Judy's response with your manager. Absent a compelling excuse for the tardiness, you should recommend to your manager that Judy be disciplined. If your manager agrees, you or your manager should contact Employee & Labor Relations for assistance in drafting the Skelly Intent Letter.

B. How does a supervisor address leave problems?

Corrective Action Steps

As in all corrective action, supervisors/managers must consider all pertinent facts and potential mitigating circumstances before taking action. Some factors to be considered are the employee's past attendance record, the nature of the position, the impact of tardiness on customers and coworkers, the frequency of tardiness, and any actions previously taken in an attempt to correct the tardiness.

Generally, tardiness should be dealt with as follows:

- a. The first instance of tardiness should normally be dealt with through verbal counseling. Infrequent tardiness which does not have an adverse impact on customers or coworkers should also be dealt with through verbal counseling. In these cases, the employee may be allowed to make up the time by extending the workday and the timecard need not record the tardy. The supervisor should maintain a note of the verbal counseling for reference if the problem recurs.
- b. If the employee continues to be tardy after verbal counseling or if infrequent tardiness has an adverse impact on customer service or coworkers, the next step is counseling confirmed in writing (verbal counseling followed by a memo documenting the counseling session. [Please see sample Counseling Memo for Tardiness](#). The tardiness should be charged to accrued leave (vacation, compensatory time, etc.) or leave without pay. The counseling memo can contain a clear warning that any future tardiness will be charged to Absence without Leave and may result in disciplinary action up to and including dismissal. The counseling memo should also reference

the availability of the Employee Assistance Program ([see Section 10](#)). Contact Employee & Labor Relations for assistance in drafting this memo.

- a. If the employee continues a pattern of tardiness after issuance of the counseling memo, further instances of tardiness should be charged to Absence without Leave (Code 060) and the employee should be issued a formal Letter of Reprimand. Please [Letter of Reprimand](#). Contact Employee & Labor Relations for assistance in drafting the Letter of Reprimand.
- b. If the employee continues to be tardy, they should be issued a letter equating to a 2-5 day suspension (depending on the frequency and duration of tardiness). Such letters involve the Skelly process, and you should contact Employee & Labor Relations before taking this step. Please see [Sample Skelly Intent Letter for Attendance](#).

If the non-punitive suspension does not stop the tardiness, progressive discipline will continue, and it can lead to the employee being dismissed.

If the employee has already been made aware of your expectations, leave problems are addressed like any other employee issue. If absenteeism is affecting the employee’s ability to get the work done, it is a performance problem. In this case, remind the employee of the specific performance expectations not being met and place him/her on a corrective action plan. If it is solely a conduct problem (e.g., the employee still gets their work done, but the absences cause coverage issues), treat it like any other conduct problem. First, counsel the employee and clarify expectations. If improvement does not occur, progressive discipline should be followed.

Please see [Sample Letter of Reprimand](#), [Sample Intent Letter – Excessive Absenteeism](#), and [Sample Decision Letter – AWOL](#).

C. What are some examples of leave problems?

Tardiness – Everyone will arrive late to work on occasion due to unexpected traffic problems or unavoidable occurrences prior to leaving home. Tardiness becomes a problem to be dealt with when it becomes too frequent, when the arrival time is too far beyond the start time, or when a pattern forms. A supervisor must exercise judgment within general guidelines in determining when tardiness becomes a problem to be addressed. Some general guidelines are:

Late more than twice a month for any reason. If, for example, an employee is 5-10 minutes late once or twice a week due to traffic problems, they should consider traffic delays a part of the commute and leave home 5-10 minutes earlier so that, when a delay occurs, they will arrive on time.

Tardiness in excess of 10 minutes.

Patterned tardiness. For example: (1) late arrival on days when it can be predicted that there will be heavy public contact first thing in the morning; (2) late arrival on the first day back to work from regular days off, e.g., Monday mornings.

Absence without Leave – When an employee does not report to work and they have not had the time off approved, the absence should be coded on the timecard as Absence without Leave (AWOL code

060), not Leave without Pay. The supervisor should call the employee's home to determine why they have not come to work and, to advise them that they are Absent without Leave. Upon their return to work, the employee should be interviewed and, if they provide an acceptable reason for the unapproved absence, the time can be changed to vacation or sick leave, as appropriate. AWOL can occur when an employee fails to report to work, when they leave early without approval, or when they cannot be found during the day. Charging an employee AWOL and coding the timecard as such does not constitute disciplinary action. In many cases, a charge of AWOL should also result in corrective or disciplinary action.

Abuse of Sick Leave – Abuse of sick leave occurs when an employee requests and uses sick leave for reasons other than those listed in the Ordinance Code or MOUs. Generally, this occurs when an employee calls in sick and is not ill. It is unusual for a supervisor or manager to discover that an employee has abused sick leave. When such a discovery is made, it is usually because the employee who has called in sick is seen shopping, golfing, or engaged in other activities inconsistent with an illness that would prevent him/her from reporting to work. If this occurs, call Employee & Labor Relations immediately for assistance in conducting an investigation.

Failure to return from an approved Leave of Absence – When an employee is granted a leave of absence, the leave is granted for a specific duration, and a letter is sent to the employee reminding him/her of the date on which they are to return to work. If the employee does not return on that date and did not previously contact the supervisor or manager to request an extension, they are considered Absent without Leave. Call Employee & Labor Relations if this situation occurs.

Excessive Absenteeism – This is the hardest area of leave administration to define. In determining whether absenteeism is excessive, you need to consider a number of factors, including the number of days absent, and whether the absences are for one or two days or for extended periods of time. You will also need to know whether the absences fall under the provisions of the Family and Medical Leave Act (FMLA), including intermittent leave, or the Americans with Disabilities Act (ADA).

Number of Absences – Although there is no set number of absences that constitutes excessive absenteeism, a good rule of thumb is no more than 8 unscheduled absences in a year. If an employee calls in with an unscheduled absence more than 8 times per year, you should see this as an issue requiring discussion. Remember that the number of absences is merely an indicator that a problem may exist.

Duration of Absences – Generally, numerous one or two-day unplanned absences are considered more of a problem than a single absence lasting a number of days. If, however, every year an employee has a circumstance that results in a one or two week absence, this should also be reviewed as a possible problem.

FMLA and ADA Considerations – If, when you interview or counsel an employee about excessive absenteeism, they makes a statement to the effect that they or a member of their immediate family has a serious medical condition, it is possible that the employee's absence(s) is/are covered by the Family

and Medical Leave Act (FMLA). If the employee makes such a statement, or any statement about having a serious illness, contact the County's ADA/TWA/LOA Coordinator for guidance. Under the FMLA, covered employees are entitled to use up to 12 weeks (480 hours) of leave per calendar year, in block time or intermittently, to care for a serious medical condition for themselves or members of their immediate family. Do not attempt to make a determination as to whether an employee is covered by FMLA on your own.

If an employee has a medical condition that is covered by the Americans with Disabilities Act (ADA), time off may be considered a reasonable accommodation. If an employee requests reasonable accommodation under the ADA, contact the County's ADA/TWA/LOA Coordinator – do not make “informal” or “unofficial” accommodations on your own.

There are also sometimes situations where scheduling prohibits a supervisor from granting the full amount of leave requested by an employee, then the employee calls in claiming that due to some unusual event or circumstance they are unable to return on the agreed-upon date. The following are two such scenarios, and guidance on how to handle these situations.

Scenario I: Harry requests two weeks off to visit Hawaii over Christmas. As a general practice, the supervisor should make every effort possible to grant the vacation request. However, if after checking the staffing, his supervisor tells Harry that she can approve the first week but not the second. On the Monday morning that Harry is to return, he calls the supervisor stating that his return flight has been canceled and he will not be able to report back to work until Thursday or Friday depending on when a flight can be booked.

Recommended Response: First, the supervisor should ask Harry for a phone number at which he can be reached. Then she should tell Harry that he is needed at work and must make arrangements to return on the first available flight, regardless of airline. She should also tell Harry that, upon his return, he will be required to provide substantiation from the airline that the flight was canceled and that his return flight was the first available. The supervisor should call the airline to confirm that the flight was canceled and to find out if earlier return flights were available. She should then discuss her findings with her manager and, if action is warranted, contact Employee & Labor Relations.

Scenario II: Jane wants Thanksgiving Day and Christmas Day off. Her supervisor checks the schedule and determines that, in order to balance requests from all employees, Jane can have one day off but not both. He tells Jane that, if she will work on Thanksgiving Day, she can be off on Christmas Day. Jane agrees to this arrangement. On Thanksgiving, Jane calls in sick.

Recommended Response: If Jane says that she is too ill to report, the supervisor should tell Jane that she must present a physician's statement upon her return stating that she was too ill to report to work.

D. What is the difference between leave without pay, and absence without leave?

Leave without pay (LWOP) is considered approved leave. If an employee requests time off and the request is approved, but the employee does not have accrued leave to cover the approved absence, leave without pay is appropriate. As a general rule, employees who wish to take more time off than they have in their vacation/holiday/compensatory time balances should not be approved for LWOP.

Absence without Leave (AWOL) is an absence that is not approved. AWOL is a violation of Civil Service Commission Rule XIII and is cause for disciplinary action.

E. Must vacation leave be approved when an employee is tardy?

No. For occasional instances of tardiness, it is appropriate to allow employees to charge the tardy to vacation rather than charging AWOL or Leave without Pay. However, once a pattern of tardiness emerges, you should counsel the employee and advise them that future tardies will be charged to LWOP (if the employee calls in) or AWOL as appropriate, and that such a charge may lead to further corrective or disciplinary action. [Please see Sample Counseling Memo for Tardiness](#). Once the employee has been placed on notice, it is appropriate to charge tardies to LWOP or AWOL, unless there are extenuating circumstances.

F. Is an employee entitled to use vacation leave whenever it is requested, if they have a balance of vacation hours?

No. Vacation leave is requested in advance and approved or denied by the supervisor or manager based on such factors as workload and office coverage. The important thing is to be consistent with all employees, use the same considerations when making decisions on requests, and base all decisions on work related issues.

However, please be aware that the Family School Partnership Act allows an employee who is a parent, guardian or custodial grandparent with children in a licensed day care facility or in kindergarten through 12th grade to take up to 40 hours a year to participate in day care or school activities. The employee may use vacation, compensatory or holiday time to take time off to attend these activities. The employee must still provide reasonable advance notice to the employer, and the employer is only required to provide up to 8 hours of time off in any given calendar month. Additionally, employers are allowed to request written proof from the school verifying that the employee participated in school activities on the specified date and time.

G. Must every request for sick leave be approved?

No. Sick leave is used for very specific purposes as outlined in the various MOUs and in the Ordinance Code.

If you believe that the employee is not sick, such as when an employee had previously requested the day off and was denied, you may advise the employee that you are not approving the sick leave. You will need to advise the employee that they must provide a statement from their physician that states that

they were seen that day and that they are physically unable to work any part of the day, in order for you to reconsider their request. Remember, you are not a doctor, so you cannot determine if the doctor's reasons are correct, but you should look carefully at the note to ensure the dates of illness correspond with the dates of leave.

Bereavement Leave

The County Ordinance Code and the various MOUs provide that sick leave may be used for the employee's preparation for or attendance at the funeral of a member of the immediate family. Immediate family is defined as parent, spouse, domestic partner, son, daughter, sibling, stepchild, mother-in-law, father-in-law, grandparent, or grandchild.

Even though sick leave may not be used for attending the funeral of individuals who do not meet the definition above, use of accrued vacation, compensatory time or holiday time is appropriate.

Managers and supervisors are strongly urged to make every effort to allow employees to be excused from work for attending funerals of friends and relatives who are not members of the immediate family.

H. When can a supervisor request a doctor's note?

The MOUs and the Ordinance Code provide management the right to require a healthcare provider's statement or make whatever other investigation into the circumstances of a request for sick leave that appears warranted before taking action on the request. Under this provision, a supervisor may require an employee to submit a healthcare provider's note upon return to work if the supervisor feels there are circumstances that warrant such a statement. In order to require the employee to provide a healthcare provider's statement in this manner, the supervisor must advise the employee of the requirement to submit a statement prior to the employee's return to work. In other words, if an employee is out sick on Monday and Tuesday, you cannot tell the employee on Wednesday when they return that a statement is required. The employee should be advised of the need to provide a statement when they call in sick.

Healthcare providers, and Kaiser in particular, routinely do not see patients in person for minor or common illnesses, such as fevers and colds. Instead, phone consultations are frequently used for cost containment purposes.

Under most circumstances, statements from Kaiser and other providers that simply state that the employee "states they are ill and unable to work" are acceptable and should not be questioned by the supervisor or manager. Since the County's HMO rates are driven by utilization, forcing employees to provide a healthcare provider's note indirectly contributes to higher health insurance premiums for all employees.

However, a medical note issued from a phone assessment without an actual office visit is not adequate when:

- An employee is requesting a Medical Leave of Absence. Healthcare provider statements to support such requests must demonstrate that the treating health care professional has

examined the individual (or their family member for FMLA leaves) and has determined that a leave of absence is required.

- Any time an employee uses sick leave in conjunction with a Workers' Compensation claim.

I. Does an employee have to provide a release to work after every illness?

Generally, an employee is not required to provide a release to return to work after illnesses. Some examples of when a release should be required are:

- If an employee has had a contagious illness.
- If an employee has had a physical injury that might limit their ability to perform physical aspects of their job.
- Prior to return from a Medical Leave of Absence. In these cases, the requirement to provide a release is stated on the leave form.

J. If an employee brings in doctor's notes as required, is there anything a supervisor can do about excessive unscheduled absences?

Yes. Civil Service Rule XIII lists "excessive absenteeism and/or tardiness" as a basis for disciplinary action. Case law has consistently held that an employer has the right to expect regular and consistent attendance from employees. It is important to contact Employee & Labor Relations to discuss this issue.

K. How do I determine whether an employee's attendance constitutes "excessive absenteeism"?

Although there is no magic number of absences that equate to excessive absenteeism, there are a number of factors to consider which can lead to a determination that absenteeism is excessive. The factors listed below should be reviewed and considered as indicators of possible excessive absenteeism. If one or more of the factors indicate a possible problem, the employee should be interviewed to determine whether there are acceptable reasons for the absenteeism. Contact Employee & Labor Relations for advice in interpreting the factors and in reviewing any reasons cited by the employee.

- 1.
2. **Patterned Unscheduled Absences.** If you identify an employee with a pattern of unscheduled absences, you need to review this situation as a potential problem. You may find employees who call in sick on Mondays or Fridays, on the day after a holiday or a holiday weekend, or on days on which workload is particularly heavy or on which a specific job task (such as a monthly report) is due.
3. **Sick Leave Usage in Combination with Vacation.** An employee may call in sick on the first day they are due to return from a vacation. It is strongly recommended that you notify the employee when they call in that they need to produce a physician's statement indicating the date they were seen by the physician and certifying that the illness precluded him/her from reporting to work on that date.

There are also situations where an employee will call in sick on days for which they had previously requested vacation time off and their request had been denied. In these cases, you will certainly want to require a physician's statement as described above. You should also call Employee & Labor Relations to determine whether further investigation is warranted.

4. **Impact on Operations.** Any time an employee's absenteeism adversely impacts service delivery, there is a potential issue of excessive absenteeism. In determining whether to take action, you will want to consider such factors as the reason for the absences and whether there is reasonable back-up for the absent employee. For example, if the employee is a receptionist assigned responsibility for opening the office each day and there is no back-up assigned, even a single day of sick leave could adversely impact service delivery. This standard is clearly not reasonable, and we would not be able to sustain disciplinary action based on occasional absences because we had failed to plan back-up coverage. In situations where absenteeism impacts operations, contact Employee & Labor Relations for guidance.

L. Can an employee use other accrued leave in lieu of sick leave to cover unplanned medical absences?

As stated in the MOUs, approval to use accrued vacation, holiday, and compensatory time hours is and has always been at management's discretion. Historically, some departments, in some circumstances, have allowed the usage of vacation, holiday or compensatory time rather than sick leave to cover unplanned medical absences, while other departments have not.

Effective April 22, 2007, departments which had been allowing the usage of other accrued leave in lieu of sick leave for unplanned medical absences will no longer continue that practice ***in work weeks where an employee works overtime.***

Sample Counseling Memo for Tardiness

DATE: Today's Date

TO: Name, Office Assistant II

FROM: Name, Supervisor

SUBJECT: Tardiness

EMPLOYEE NAME, on (dates) you were tardy in your arrival to work. On those dates, I counseled you regarding the need to be at your desk ready to begin work at 8:00. Since then, you have been tardy on DATE and on DATE. Your late arrival adversely impacts our ability to serve our clients and can no longer be tolerated. It is your responsibility to arrive to work on time.

My expectation is that you have no tardies in excess of 15 minutes, and no more than two tardies of 15 minutes or less, per month, on an ongoing basis.

If you continue to be tardy, you may no longer make up the time, nor may you use accrued vacation, holiday or compensatory time to cover any instances of tardiness. Rather, this time will be charged to Absence without Leave (AWOL), as circumstances warrant.

To assist you in improving your attendance, I am making a job performance referral for you to the County's Employee Assistance Program. The services provided by the Employee Assistance Program may assist you in resolving any personal difficulties that may be contributing to your absenteeism, and you may take advantage of this referral by calling 1-800-834-3773.

Please be aware that tardiness and AWOL are violations of Civil Service Rule XIII and are cause for disciplinary action, up to and including dismissal from County service.

cc: Supervisory File

Sample Letter of Warning

– PLACE ON YOUR DEPARTMENTAL LETTERHEAD –

DATE: Today's Date

TO: Employee, Classification

FROM: Supervisor, Title

SUBJECT: Letter of Warning

This is a letter of warning regarding your excessive absenteeism. You currently have no sick leave and only 8 hours of vacation in your leave balance. So far this year, you have used 56 hours of sick leave and 24 hours of vacation for unscheduled absences. You have also used 28 hours of leave without pay for unscheduled absences after exhausting your sick leave. During the first 7 months of this year, you have been absent 12 full days and parts of 3 other days. This is an unacceptable rate of absenteeism that must be improved immediately.

I recognize that you have had some personal difficulties during this time, and I also realize that events occur that result in absences of an unexpected nature, but at the time these events occurred you had already used up almost all your available paid leave. During your six years of County employment, you have consistently used all or almost all accrued leave. Your absences have occurred with such frequency that they have impacted our ability to accomplish our work. When you are not here, your caseload ages and other employees must pick up some of your cases to ensure timely processing. This is not acceptable.

I have verbally counseled you about your excessive absenteeism on several occasions but have seen no improvement from you. Since my efforts to counsel you informally have not worked, I am issuing this warning letter in an effort to communicate to you the seriousness of this situation.

Effective immediately:

- I am rescinding your 9/80 schedule and returning you to a schedule of 8:00 a.m. to 5:00 p.m., Monday through Friday with a one-hour lunch period.
- I am rescinding your telecommuting privileges.
- Should you or a family member become unexpectedly ill and render you unable to report to work, you must call me no later than (time) to request leave. If I am not available, then you must contact (name) at (extension). Should you reach my voice mail and be unable to reach me directly, you must leave a phone number at which I can reach you during the day.

I am making a job performance referral to the Employee Assistance Program (EAP) for you. The EAP phone number is 1-800-834-3773 and you may use the visits on County time. These services could assist you in resolving any personal difficulties you may be experiencing.

cc: Supervisory File

Sample Letter of Reprimand – Absenteeism

– PLACE ON YOUR DEPARTMENTAL LETTERHEAD –

Date:

To: Employee, Classification
From: Supervisor, Title
Subject: Letter of Reprimand

This is an official Letter of Reprimand for your excessive absenteeism.

On (date) you were issued a warning letter that outlined my concerns regarding your excessive use of sick leave and placed you on leave restriction. That letter had followed a verbal counseling session that did not result in your improving your attendance.

Within two weeks after receiving this memo, on (date), you left 3 hours early to have your car repaired as you had car trouble on the way in to work that morning.

On (date) you called to say that you had to help a friend and would be late. You arrived 3.5 hours into your shift.

On (date) you left early for a doctor's appointment that had not been previously scheduled.

An employer may reasonably expect an employee to be available for work on a regular basis and may also reasonably expect unscheduled absences to be kept to a minimum. I believe the Department has done its best to work with you, and yet there does not seem to be a commitment on your part to make the effort to be here and to accomplish your work. Should your attendance not improve, disciplinary action may be taken to bring your attendance to an acceptable level.

A copy of this letter is being placed in your Civil Service and departmental personnel files. You may respond in writing to this letter. Should you choose to do so, that response will be made a part of these personnel files.

cc: Department Head
Manager
Rocio Kiryczun, Director, Human Resources Department
Civil Service Personnel File
Departmental Personnel File

Sample Skelly Intent Letter – Attendance (Non-Punitive Discipline)

– PLACE ON YOUR DEPARTMENTAL LETTERHEAD –

DATE

Name

Classification

Department

(Hand delivered)

Dear Mr. NAME:

Please take notice that it is the intent of this office to issue you a non-punitive disciplinary letter that equates to a 3-day suspension. Although you will not miss work or have your pay docked, this non-punitive disciplinary action carries the weight, in terms of progressive discipline, as if you had actually been suspended without pay for three working days. The grounds upon which this disciplinary action is being proposed are in accordance with Section 4 of Civil Service Commission Rule XIII as follows:

- A. Absence without Leave. Absence without leave shall mean any time an employee is absent from the workplace without authorization or without an explanation satisfactory to the appointing authority. This includes an employee's failure to report to work after a leave of absence has expired or after such leave of absence has been disapproved or revoked.
- M. Excessive absenteeism and/or tardiness.

Prior attempts to address your chronic tardiness, poor attendance, and absence without leave, did not result in improved reliability on your part. Unfortunately, you have continued to have a string of excessive absences, and they form the basis for this proposed disciplinary action.

Most recently, you were issued a Letter of Reprimand on DATE for continued excessive absenteeism, including tardiness. Since then, you have called in with several unplanned absences, including:

- On 10/16/25-10/17/25 you were out because your car wasn't working and couldn't get to work.
- On 11/6/25 you were out because you had construction workers at your house.
- On 11/15/25 you called in, stating you were staying home to sleep.
- On 11/16/25 you called in stating you were driving your wife to work, because she was unable to drive herself.
- On 11/17/25 you called in saying your brother-in-law had taken a turn for the worse and you were stranded in (name of city).
- On 11/20/25 you called in to state you were coming back and would be in to work for sure the next day.
- On 11/21/25 you called in to say you were in a rented car driving back and would be in to work for sure the next day.

- On 11/22/25 you called in stating you were taking your wife to medical appointments and would not be in to work.
- On 11/28/25 you called in to report you would be off work because your kids were off school that day and you didn't have childcare.
- On December 11, 2025, you called and left a message stating you would not be in to work and should be in the next day.

This is an unacceptable rate of absenteeism. You are therefore charged with violating Civil Service Rule XIII 4 (M).

When deciding to propose this level of disciplinary action, I also took into consideration the fact that previous corrective actions issued to you have not resulted in sustained improved behavior on your part. You have placed yourself in an untenable situation, and it cannot continue to occur. If you do not improve your reliability immediately, and sustain said improvement on an ongoing basis, you will be faced with further disciplinary action, up to and including, dismissal from County employment.

All written materials, reports and documents upon which this action is based are available to you by contacting me. You will further take notice that you have the right to respond either orally or in writing, or both, to the charges contained in this letter. If you wish to respond in writing, (NAME OF SKELLY OFFICER) must receive your response no later than (approximately 7 working days later). If you wish to respond orally, you must contact (NAME) at (650) XXX-XXXX no later than (approximately 4 working days later) to schedule a meeting to be held no later than (approximately 7 working days later). If you do not contact (NAME) or provide a written response by the above dates, it will be assumed that you have waived this right. You have the right to be represented by your union in this matter.

Sincerely,

NAME

CLASSIFICATION

cc: DEPARTMENT HEAD
SKELLY OFFICER
Rocio Kiryczun, Director, Human Resources Department
Kim Ferrario, Employee & Labor Relations Manager
Civil Service Personnel File
Departmental Personnel File

Sample Skelly Decision Letter – AWOL (Non-Punitive Discipline)

– PLACE ON YOUR DEPARTMENTAL LETTERHEAD –

DATE

Employee

Address

Dear Ms. Employee:

Please take notice that you are issued a letter that equates to a two-day suspension. Although you will not miss work or have your pay docked, this non-punitive disciplinary action carries the weight, in terms of progressive discipline, as if you had actually been suspended without pay for two working days.

The grounds upon which this disciplinary action is being taken are in accordance with Section 4 of Civil Service Commission Rule XIII as follows:

- A: Absence without Leave. Absence without leave shall mean any time an employee is absent from the workplace without authorization or without an explanation satisfactory to the appointing authority. This includes an employee's failure to report to work after a leave of absence has expired or after such leave of absence has been disapproved or revoked.

You were absent without leave on March 21. You had requested that day off in a conversation you and your supervisor had on March 17. Your supervisor had indicated to you at that time that several other employees had requested the day off in advance, and that she would not have adequate coverage on the unit if you were not there. On March 21, you called in sick, saying you had a headache and would not be in. You did not provide a medical statement, as required, in support of your unplanned absence.

In taking this action, I am also taking into account that you have received a letter of reprimand for a similar incident on February 22, when you called in sick the Tuesday after the holiday, even though your supervisor had disapproved your request for vacation leave at that time. As was indicated in the letter of reprimand dated February 24, any further instance of calling in sick after a requested vacation day had been disapproved may result in disciplinary action. Your failure to be at work impacts the whole unit. When the unit is short-staffed, every person has to work harder, or overtime hours must be paid to another employee to cover for you. We are part of a team effort to provide services to our patients, and you are not fulfilling your responsibilities to your team or to the County.

You took the opportunity to reply to me on DATE. At that meeting you acknowledged that your attendance wasn't satisfactory and made a commitment to improve in the future. As a result, I agreed that this letter would be removed from your Civil Service file twenty-four months after its issuance, if you did the following:

1. Improve your overall attendance and raise your leave balances.
2. Review your work schedule to determine if an alternative work schedule would assist in improving your attendance.

3. Have no future instances of AWOL.

If you do not comply with the plan as specified, then this letter will remain in your file permanently. I am making a job performance referral to the Employee Assistance Program (EAP) for you. The EAP phone number is 1-800-834-3773 and you may attend pre-approved visits on County time.

Sincerely,

Department Head

cc: Manager, Title
 Rocio Kiryczun, Director, Human Resources Department
 Kim Ferrario, Employee & Labor Relations Manager
 Civil Service Personnel File
 Departmental Personnel File

10. THE EMPLOYEE ASSISTANCE PROGRAM (EAP)

Claremont EAP is a confidential, short-term counseling service available to County employees and their families. The EAP offers 5 free counseling visits per incident, per rolling 12 months for almost any personal issue. All eligible employees and/or dependents can call Claremont EAP at 1-800-834-3773, Group/Employer: County of San Mateo. Counselors are available to help clients sort out problems, develop an action plan, and take positive steps towards the desired outcome.

A. How can an employee use the services of the EAP?

Employees may “self-refer” by calling Claremont EAP for assistance with a variety of issues including:

- Marital, family or relationship distress
- Emotional upset
- Alcohol and/or drug problems
- Co-alcoholic or co-drug problems (any person close to a substance-troubled person and being affected by that illness)
- Stress
- Cultural adjustment
- Crisis
- Other personal problems

Claremont EAP offers referrals to screened resources for legal or financial problems. If referred to an attorney or financial planner, the employee is responsible for the cost.

B. What is the supervisor's responsibility in suggesting the EAP to an employee?

A vital part of the supervisor/manager's responsibility is to correct performance or conduct that negatively impacts either the employee or the workplace. Discipline, and the steps that lead to discipline (counseling, counseling confirmed in writing, corrective action plans, specials reviews, etc.) should always be considered steps to bring the employee back into a productive and healthy course of employment. Any corrective action letter or disciplinary letter (except dismissal) given to an employee should advise the employee of the services available through the EAP. Claremont EAP is an effective resource to assist supervisors and managers to correct employee problems by offering counseling to the employee. Managers/supervisors can make a “Management Referral” referral when a performance or conduct problem is identified; see Section C below for more information.

If an employee tells their supervisor that they are experiencing personal difficulties, but there is no conduct or performance problem, the supervisor should advise the employee of the availability of the EAP and provide him/her with Claremont EAP's phone number. For example, a supervisor may know that an employee recently has lost a family member, or the employee may have mentioned a personal problem to the supervisor. Employees or members of their family can use up to five free visits per fiscal year, on the employee's own time (either after work hours, or on approved leave).

C. What about a supervisor/manager referral?

This is recommended when the employee's work-related conduct or performance has deteriorated, and an obvious problem exists that can benefit from therapeutic intervention. For example, an employee may have a pattern of absences suggesting a drug or alcohol problem, or an employee's emotional state may indicate the need for professional assistance. This referral may provide employees with additional covered visits and they can attend the visits on County time. Time spent at visits is coded as normal working hours.

D. Must an employee attend EAP if referred?

No. The decision to attend the EAP is entirely the employee's decision. The fact that an employee has been given the opportunity will be an important part of a supervisor's or manager's proof that reasonable attempts have been made to assist the employee. If an employee chooses to accept a referral, then that also indicates that the employee has cooperated with those reasonable attempts.

E. How is an EAP referral made?

The following information from Claremont EAP describes the procedures used in accessing EAP services. <https://www.smcgov.org/hr/employee-assistance-program-eap>

Management Referral Guidelines

Management Consultation

The EAP provides a valuable and confidential service to the manager who may have concerns regarding an employee's unsatisfactory job performance or conduct. It is the goal of the EAP Consultant to help clarify the issues and coach the manager through the appropriate course of action.

Management Referral

1. Document all observable behavior that is inconsistent with established work standards, or the employee's usual satisfactory work performance.
2. Call Claremont EAP at 1-800-834-3773 for a consultation to determine the appropriateness of a formal Job Performance Referral to the EAP.
3. Meet with the employee to discuss unsatisfactory work performance and/or conduct.
4. Inform the employee that you have called the EAP and that you are referring her/him on a Job Performance Referral.

Be sure the employee understands that:

5. She/he is free to choose whether to accept the EAP referral or not.
6. Using the EAP in no way jeopardizes job security or promotional opportunities.
7. Regardless of whether she/he accepts the referral; you will continue to evaluate and respond to future performance or conduct issues. Referring the employee to the EAP does not constitute corrective or disciplinary action.
8. Inform the employee that confidentiality will be assured. Tell the employee that you will only be given the following information (provided a Release of Information is signed):
9. Whether the employee kept the appointment.
10. If a recommendation was made to the employee (not the nature of the recommendation or the details).
11. Any need for accommodations (e.g. Modification of schedule).
12. Projected time frame for improvement.
13. Whether the employee accepted and is following through with the recommendation.
14. If the employee accepts the referral, advise her/him to contact the EAP Consultant within an appropriate time frame; usually 24 hours, and provide the employee with the Consultant's telephone number.
15. The EAP Consultant will register the employee and give her/him the name and telephone number of a counselor to set up an appointment.
16. The EAP Consultant will discuss ways for you to evaluate the progress of your employee and how to give her/him feedback regardless of their compliance with the JPR.

The Consultant will maintain contact with you, the employee, and the treatment provider on a regular basis for up to one year to report compliance and review employee performance. The EAP is designed to augment your own management style and corrective/disciplinary action, not replace it.

Preparing for a Management Referral Checklist

A Management Referral is a referral initiated by a supervisor or a manager when work performance or behavior is an issue, for example, poor quality or quantity of work, unacceptable conduct, absenteeism or tardiness, or interpersonal relationship problems with other employees or the public. The checklist that follows has been designed to help you gather information and prepare for your discussion with the EAP Consultant.

General Information

- Supervisor's Name
- An alternate person to contact
- Work location address
- Name of employee to be referred
- Employee's address, including county

Statistical Information

- Employee's length of service
- Age, gender, marital status, social security number
- Position title
- Employee's health insurance
- Bargaining unit (or wage level) of employee if applicable

Description of Problem

- Performance issues occurring at work:
- Quality of work
- Relationships at work or with the public
- Behavior/conduct
- Absenteeism/tardiness—frequency and patterns
- History of problem—how long?

Progressive Action

- Progressive/corrective action taken or pending which is relevant to current problems
- Future status (i.e. what will be the next step in progressive action if the employee does not improve)

Note: The EAP Consultant will coordinate an assessment and referral session with a counselor as soon as the employee agrees to participate in the Job Performance Referral.

11. OVERVIEW – GRIEVANCES AND APPEALS

Introduction

Employees may disagree with actions taken or not taken by their supervisors/managers or by other management officials. Some of these issues may be grieved under the negotiated grievance procedure described in the various MOUs. Other issues may be appealed to the Civil Service Commission.

Both the negotiated grievance process and the Civil Service Commission appeal process allow an employee to bring their issue to someone other than the supervisor or manager who took, or did not take, the action with which the employee takes issue.

An issue can be grieved only if it involves an alleged violation of a provision of an MOU. In the grievance process, the represented employee goes through a series of steps, presenting their case for consideration at each step. If the issue is not resolved at the lower steps of the process, the matter may ultimately be presented to an independent arbitrator whose decision is binding on both parties.

An issue can be appealed to the Civil Service Commission only if the Civil Service Rules specify that the issue is subject to the Civil Service appeal process. In such an appeal, the employee presents their issue to the Commission, with no prior steps in the process. The Commission's decision is binding on both parties.

In the case of a disciplinary action, a represented, classified employee must decide whether to file a grievance or request an appeal before the Commission. Once either process has begun, the employee cannot switch to the other process.

Appeal/Grievance Matrix

ACTION	APPEALABLE	GRIEVABLE
Result of a Recruitment	YES	NO
Classification of Position <ul style="list-style-type: none"> • Results of Classification Study • Denial of request to conduct a Classification Study 	YES	NO
<ul style="list-style-type: none"> • Denial of request to conduct a Classification Study 	NO	YES
Performance Evaluations – Permanent Classified Employees (Only when overall rating is “Improvement Needed or Unsatisfactory”)	YES	NO
Rejection of Probationer (Only when substantiated in writing that the decision was based on discrimination)	YES	NO
Disciplinary Action (Dismissal/Demotion/Suspension/Non-Punitive Discipline)	YES	YES
Corrective Action (Counseling memo, Confirmation memo, Letter of Warning, Letter of Reprimand)	NO	NO
MOU Violation	NO	YES

12. THE GRIEVANCE PROCESS

A grievance can be loosely defined as any concern or complaint raised by an employee. In this context, concerns/complaints may be raised about a wide variety of issues, such as building temperature, workload, or denial of a requested change in assignment or location. Supervisors should give a fair hearing to employees raising such complaints, and, if appropriate, discuss possible resolutions with their managers. Listening to and attempting to promptly resolve employee complaints is an essential step in maintaining high morale and positive employee-supervisory relations. In order to feel part of a productive team, employees need to know that they can raise concerns/complaints without fear of reprisal, and that their concerns/complaints will be heard and given full consideration.

The informal “grievances” described above are not covered by the negotiated grievance process. In order for a grievance to be filed and processed under the provisions of the negotiated grievance process, the grievance must allege that a provision of the MOU was violated. This Section discusses the formal negotiated grievance process. The Memoranda of Understanding covering represented employees and can be accessed at <http://hr.smcgov.org/memorandum-understanding-mou>.

A. What is the first step of the grievance process?

Step 1 involves the employee, with or without a union representative/steward, meeting with a management representative in their department to attempt to resolve the grievance. If the issue is not resolved at this step, or if the employee/union elects to waive the first step, the issue is moved to Step 2. Any grievance involving compensation must be submitted in writing to the Human Resources Department Director.

B. What is the second step of the grievance process?

In order to move a grievance to Step 2, an employee or union representative must write to Employee & Labor Relations or the Human Resources Director to formally file the grievance, stating the issue being grieved, the MOU section, which is alleged to have been violated, and the desired remedy. This notification must be filed within the timeframes prescribed in the applicable MOU. This is why it is important to have a clear record of the date of issuance of Skelly Decision Letters. Following receipt of the grievance, Employee & Labor Relations schedules a Step 2 grievance meeting with the employee (and their union representative if applicable), and then holds a discussion with the department representatives, or investigates the grievance, in an attempt to settle the grievance.

C. What is the third step of the grievance process?

If the parties are unable to resolve the grievance after the Step 2 meeting, the union can advance the grievance to an Adjustment Board (Step 3) by submitting a written request to Employee & Labor Relations or the Human Resources Director within the timeframe prescribed in the applicable MOU. An employee cannot advance a grievance to the Adjustment Board without involving his/her union.

An Adjustment Board is a hearing before a four-member panel that is tasked with attempting to resolve or adjust the grievance. For each Adjustment Board, the union appoints two panel members, and the

Employee & Labor Relations Manager appoints two panel members. Each party presents their case by introducing evidence in the form of written documents and testimony from witnesses. Normally, the grievant's presentation is made by a union representative, and the Department's presentation is made by a representative from Employee & Labor Relations (attorneys are not normally involved at Step 3). Although a union representative and Employee & Labor Relations representative "present" the opposing cases, this presentation is actually accomplished by having witnesses offer oral testimony and introduce written documents. Employee & Labor Relations and County Attorney work closely with department representatives to prepare the case and prepare witnesses. The four panelists may also ask questions of both parties and of witnesses. After all evidence and presentation is completed, the four panelists convene in executive session to attempt to reach a majority opinion to grant, partially grant, or deny the grievance and requested remedy. If the panel reaches a majority decision, that decision is binding on the parties and the grievance process ends. If the panel is unable to reach a majority decision, the union may invoke arbitration (Step 4) as described below.

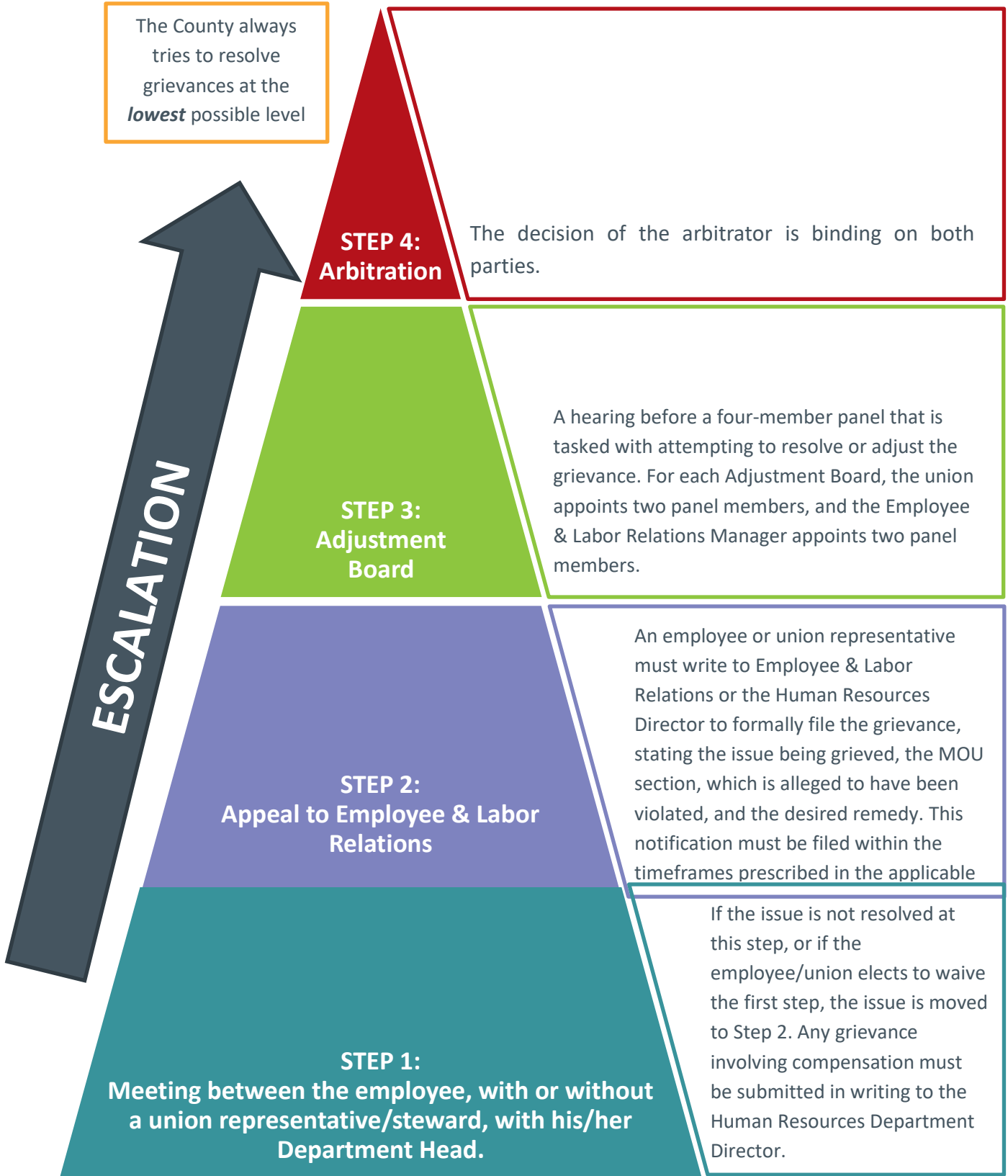
D. What is the fourth step of the grievance process?

The fourth and last step of the grievance process is arbitration. If the Adjustment Board is unable to reach a majority decision, or the parties mutually waive the Adjustment Board, the union, and only the union, may invoke arbitration by filing a written request to do so within the timeframe prescribed in the applicable MOU. In an arbitration proceeding, the positions of the grievant and management are presented by attorneys. An arbitrator hears the grievance and renders a binding decision. The union and the Department within which the grievance arose share the cost of arbitration fees equally. Each party is responsible for its own legal expenses.

Once a case goes to arbitration, the County Attorney's Office becomes the department's representative, as arbitration is a formal proceeding governed by the rules of evidence and procedure. The County Attorney's Office and Employee & Labor Relations work together with the department representatives to prepare management's case and witnesses prior to the proceeding.

The Grievance Process

The County always tries to resolve grievances at the **lowest** possible level



13. THE CIVIL SERVICE APPEAL PROCESS

The Civil Service Commission is a board of five electors of the County appointed by the Board of Supervisors to prescribe and administer the Civil Service Commission Rules. No commissioner may be a current County employee. The Rules of the San Mateo County Civil Service Commission can be accessed at: <http://hr.smcgov.org/civil-service-commission-rules>

A. What issues may be appealed to the Commission?

Employees or applicants may appeal the results of a recruitment that are below passing, and only if they allege bias, discrimination, or fraud in the conduct of the recruitment.

Employees who are rejected during their probation may appeal to the Commission only if they allege and substantiate in writing that the probationary rejection was based on race, color, religion, sex, national origin, age or handicap.

Permanent classified employees, as articulated in Civil Service Rule XII, may appeal Performance Evaluations carrying an overall Below Standard (Improvement Needed or Unsatisfactory) rating.

Classified employees may appeal disciplinary action (dismissal, demotion, suspension, non-punitive disciplinary letter) as covered by Civil Service Rule XIV.

Classified employees may appeal certain other rulings by the Human Resources Department Director (e.g. the results of a classification study).

The Commission Rules specify timeframes under which each of the above types of appeals must be filed. An employee cannot both appeal an issue to the Commission and grieve the same issue through the negotiated grievance process.

B. How does the Commission handle appeals?

Depending on the nature of the matter being appealed, the appeal may be heard by the entire Commission, or by a sub-committee comprised of two Commissioners. The Commission listens to presentations by both parties, asking clarifying questions as needed. Depending on the nature of the matter being appealed, an employee/applicant may represent themselves, or may use a Union representative or attorney to present their case. The Department's position may be presented by a management representative or by a County Attorney.

Once both parties have completed their presentations, the Commission members go into an "executive session" to consider the merits of the case and discuss their findings. The members vote and a majority vote becomes the decision of the Commission. The Commission's decision is binding on both parties.

C. What are the guidelines for preparing for and presenting cases before the Civil Service Commission?

These are general guidelines, which may vary from case to case. The method of presenting individual cases will be decided in a meeting between the department, a County Attorney, and Employee & Labor

Relations. These guidelines are based on the presumption that the employee's performance was substandard or did warrant disciplinary action. You may want to review these guidelines prior to issuing a substandard performance evaluation or taking disciplinary action to ensure that you are in good position and have sufficient evidence to defend your action if necessary. As a reminder, you are encouraged to contact your Employee & Labor Relations representative to review the situation prior to issuing a substandard performance evaluation or prior to taking any disciplinary action.

Appeals of Substandard Performance Evaluations

Reference

Section 4 of Civil Service Rule XII provides that "Permanent employees may appeal to the Commission for a review of performance evaluations which are below a standard score or rating set by the Director." Rule XII further states: "This review is a fact-finding examination for the purpose of detecting and correcting any abuse of discretion."

Upon receipt of a written appeal for a review by the employee, the Human Resources Department places the request for appeal on the agenda for the next meeting of the Civil Service Commission. At that meeting, the Commission will first decide whether to accomplish the review through a fact-finding committee of two commissioners or by the Commission as a whole. The Commission will then set a mutually agreeable date for the fact-finding hearing.

Preparation

After an employee files an appeal, the attorney in the County Attorney's Office assigned to the case will coordinate the preparation for the hearing. The appellant's immediate supervisor, the supervisor's manager, County Attorney, and the Employee & Labor Relations representative may be requested to assist with the preparation and/or testify in the appeal hearing. Any other management representatives with relevant input may also be needed (e.g. EEO Manager).

The department's case consists of:

- a. A listing of the standards/objectives which the appellant failed to meet
- b. Evidence, documents and/or oral testimony that the employee failed to meet the standards/objectives
- c. Evidence that the employee was counseled and given an opportunity to improve prior to issuance of the evaluation

Appeal Hearing

An appeal hearing before the Civil Service Commission is a formal hearing where the County Attorney presents the case on behalf of the Department and the Union Representative or Union Attorney presents the case on behalf of the employee. The hearing will allow both parties to give an opening statement, call witnesses, enter written evidence, cross examine witnesses and make closing statements.

Department's Presentation

The Department should be represented before the Commission by the County Attorney to the Department. A manager from the Department who is familiar with the case should be sitting with the County Attorney throughout the hearing to provide any clarifying information. If other individuals are needed to provide specific information or testimony, they should be called as witnesses and dismissed after testifying rather than remaining for the entire session.

The case is introduced by opening statements and stating that the purpose of the fact-finding examination is to identify and correct any abuse of discretion.

During the appellant's presentation, management representatives should take notes of points raised by the appellant. Any inaccurate or misleading statements of significance should be noted for the County Attorney so they can rebut the statements in testimony, cross examination or the closing statements. Statements made by the appellant that are not pertinent, or that would not be of significance to the Commission should be ignored. It is vital to focus the Commission on management's case, rather than allow the appellant to obscure the case by engaging the Department in debates or discussions of irrelevant issues.

All management representatives must be aware of the non-verbal communications they present to the Commission. Without knowing it, you can easily give these signals by rolling your eyes, frowning, commenting on, or shaking your head in disbelief at statements being made by the appellant or their representative. The Commission may interpret such behaviors as an indication that you do not openly listen to or respect the employee on the job.

The Department's case is concluded by making a closing statement summarizing the standards that weren't met, describing how the employee failed to meet the standards, and stating that the Department did not abuse its discretion in evaluating the appellant.

Appeals of Disciplinary Actions

Reference

Civil Service Rule XIV provides that employees may appeal dismissal, demotion, or suspension / non-punitive suspension actions to the Commission. In cases involving dismissal, demotion, or suspension / non-punitive suspension, an appeal hearing by the Commission is mandatory, if requested by the employee.

In cases other than dismissal, demotion, or suspension / non-punitive suspension, a hearing is discretionary with the Commission. When discretionary, the Commission decides whether to have a hearing after a review of written materials submitted by the employee and by the Department or after a brief oral summary of the merits of the case by the petitioner.

Section 5.A of Civil Service Rule XI provides that "The appointing authority may terminate a probationary employee at any time during the probationary period without the right of hearing by or appeal to the Commission except when an employee alleges, and substantiates in writing, discrimination ... as the reason for termination."

Upon receipt of a request for an appeal hearing, the Human Resources Department places the appeal request on the agenda of the next meeting of the Civil Service Commission. At that meeting, the Commission will decide whether to hear the appeal. At that meeting, the assigned County Attorney may argue, for the Department, that a hearing should not be granted. If the Commission decides to grant a hearing, or if a hearing is mandatory, the Commission will set a mutually agreeable date for the hearing.

Preparation

A preparatory meeting will be scheduled by the County Attorney for the operating department as soon as possible after an employee files an appeal. The County Attorney should put together the department's case, and anticipate and develop responses to the appellant's case. The department's case consists of:

- **The Rule** – The rule(s) which the employee has broken, as cited in the Skelly Decision Letter.
- **The Facts** – A description of how the employee broke the rule(s). This is taken from the body of the Skelly letter.
- **Proof** – Evidence to show that the employee did violate the rule(s). This proof is in the form of the "material relied on" used by the deciding official in making the decision to discipline.

In addition to the above, the department's case should also answer the following questions:

- Was the employee given forewarning or foreknowledge of the possible consequences of misconduct? This usually consists of documentation of counseling sessions but may also include policies signed by the employee.
- Did the department, before administering discipline, make an effort to determine whether the employee did, in fact, violate the rule(s)?
- Was the investigation conducted fairly and objectively?
- Have the rules and discipline been applied equitably and without discrimination to all employees?
- Was the degree of discipline reasonably related to the seriousness of the offense and to the record of the employee in their service with the organization?

Department's Presentation

The specifics of each case will guide its presentation, but a general guide is as follows:

Counsel introduces the case by raising any pertinent legal points in their opening statement.

Counsel calls witnesses to present the Department's case. Counsel will have gone over questions to be asked and answers to be given in advance of the hearing. The witnesses should present the case in a factual manner, without impugning the character of or assigning motives to the appellant. Care should be taken by witnesses to avoid references to the "attitude" of the appellant. The focus should be on observable conduct.

During the presentation, Counsel may introduce exhibits to support the Department's case. These should include the Skelly Decision Letter, and the material relied on by the deciding official in determining to take disciplinary action.

During the appellant's presentation, management representatives should take notes of points raised by the appellant. Any inaccurate or misleading statements of significance should be briefly rebutted at the end of the appellant's presentation. Statements made by the appellant that are not pertinent, or that would not be of significance to the Commission should be ignored. It is vital to focus the Commission on management's case, rather than allow the appellant to obscure the case by engaging the Department in debates or discussions of irrelevant issues.

All management representatives must be aware of the non-verbal communications they present to the Commission. Without knowing it, you can easily give these signals by rolling your eyes, frowning, and commenting on or shaking your head in disbelief at statements made by the appellant or their representative. The Commission may interpret such behaviors as an indication that you do not openly listen to or respect the employee on the job.

Counsel provides a closing statement summarizing the standards that weren't met, describing how the employee failed to meet the standards, and stating that the disciplinary action taken was for cause.

14. CLASSIFIED AND UNCLASSIFIED EMPLOYMENT

Some of the most commonly asked questions concerning the differences and similarities between classified and unclassified employment are listed below. This information is a guide, and individual situations should be reviewed with your assigned Talent Acquisition Analyst.

GENERAL

A. Why are positions unclassified?

Section 502.b of the County Charter provides that a variety of positions are unclassified to facilitate administration of County functions. Unclassified employees are considered at-will and can be removed from their position at any time and for any non-discriminatory reason that the appointing authority deems appropriate.

B. Who decides what positions are unclassified?

Section 502 of the [County Charter](#) designates all positions as classified unless they are specifically exempted. The positions that are exempted are:

- The County Manager and one principal assistant.
- Department heads.
- Persons employed to render professional, scientific, technical, or expert services on a temporary basis for a specific project.
- Resident physicians employed in clinics, institutions, and hospitals.
- Persons required possessing a license to practice law.
- Two deputy sheriffs in the office of the Sheriff.
- Special officers or investigators in the offices of the Sheriff and the District Attorney.
- One person holding a confidential position to each elected board or commission, including the Board of Supervisors.
- One person holding a confidential position to each elected department head.
- Legislative staff to members of the Board of Supervisors.

C. Measure D

In 2004, San Mateo County voters resoundingly approved Measure D by a 19-point margin. Measure D provides that no employee may serve in an unclassified position for longer than three years. If an employee remains unclassified for over three years, they will automatically become part of the classified service and become subject to the standard provisions of the County's Civil Service Rules.

D. Why are there classified and unclassified employees in the same jobs?

This occurs when some employees are performing ongoing work and other employees are hired to perform similar work for a limited duration or under a grant. For example, Behavioral Health and

Recovery Services has a core of permanent positions but also periodically receives grants for special projects. The employees hired to perform the grant work are commonly in the unclassified service.

EMPLOYMENT

E. How are people hired into the unclassified service?

Departments may use hiring processes similar to those used for classified positions and may even make appointments to unclassified positions from classified employment lists, but they are not required to do so. Departments are strongly encouraged to do so for positions impacted by the passage of Measure D.

F. What happens if a position is changed from classified to unclassified?

If a filled classified position is changed to unclassified, it is considered a layoff subject to the provisions in the Civil Service Rules and Memoranda of Understanding.

G. What happens if a position is changed from unclassified to classified?

Section 14 of Civil Service Commission Rule XI states that the County may appoint, without examination, unclassified employees to classified positions under the following conditions:

- The unclassified position had been grant-funded and the County has elected to continue the program; or the unclassified position had been established for a short-time project and the County has elected to continue the activity; and
- The employee has held the position for at least one year in a satisfactory capacity; and
- The employee was hired into the unclassified position from an eligible list; and
- The Human Resources Department Director has determined the proper classification for the position.

If these conditions are not met, the employee in the unclassified position must take the competitive examination to transition to the classified service.

H. Can a person in an unclassified position take County examinations for classified positions? Can they take promotional examinations?

All persons in unclassified positions can compete for classified positions any time that an Open or Open and Promotional recruitment is conducted.

Persons in unclassified positions, who previously held classified status without a break in County service between the classified and unclassified appointments, are eligible to compete in promotional examinations provided they have at least six months total classified and unclassified service prior to the final date to file an application.

Persons in unclassified positions in specific departments, who previously held classified status without a break in County service between the classified and unclassified appointments, are eligible to compete for Departmental Promotional Only examinations provided they have at least six months total classified and unclassified service in the department prior to the final date to file an application.

I. If a person is in an unclassified position can they transfer to classified positions?

Persons in unclassified positions, who previously held a classified position and who did not have a break in County service between the classified and unclassified appointments, are eligible to transfer to classified County positions, consistent with the Civil Service Rules governing transfers.

J. If a person in a classified position wants to take an unclassified position, what happens?

An employee who moves from classified to unclassified service must resign from the classified service. This means that all rights in the classified service are terminated at that point. Sick leave, vacation balances and accruals, retirement benefits, and health benefits are not affected by the resignation from the classified service. These benefits continue to accrue as though there has been no change in employment status.

There is also a provision in the County Ordinance Code stating that employees may be granted a leave of absence for a maximum period of four years to accept a position in the unclassified service. Upon termination of employment in the unclassified service, employees who are granted such a leave of absence have the right to return to a position in the same or comparable classification as the one occupied at the time the leave of absence was granted. Granting of such a leave of absence is discretionary.

BENEFITS**K. Do health benefits for classified employees differ from those of unclassified employees?**

There is no difference in health, dental, vision, or life insurance benefits based on classified or unclassified status.

L. Do retirement benefits or obligations for classified employees differ from those of unclassified employees?

There is no difference in retirement benefits or obligations based on classified or unclassified status.

**Classified and Unclassified Employees –
Comparison of Terms and Conditions of Employment**

CLASSIFIED	UNCLASSIFIED
Recruitment & Selection	
Covered by the provisions of the Civil Service Rules specifying the manner that recruitment and hiring is carried out.	Not covered by the Civil Service Rules. Department heads are encouraged to follow the normal processes used for classified positions.
Layoff	
Layoffs are governed by the Civil Service Rules and are generally done in reverse order of seniority.	Employees serve at the pleasure of the appointing authority and can be removed at any time for any non-discriminatory reason. Seniority does not control the order of staff reductions.
Union Representation	
Can be represented. If represented, can file grievances on any provision of the labor contract.	Can be represented. If represented, can file grievances on any provision of the labor contract except disciplinary actions.
Civil Service Coverage	
Covered by the provisions of the Civil Service Rules.	Are not covered by the rules of the Commission.
Probation Period	
The probation period is set for each classification. The probation period ranges from six months to eighteen months.	There is no formal probation period.
Leave Accruals	
Sick leave, vacation, overtime and holiday time are the same for both classified and unclassified employees. Leaves of absence are also the same.	
Benefits	
Health, dental, vision, long term disability, life insurance, short term disability, retirement, the Employee Assistance Program and other benefits are the same for classified and unclassified employees.	
Salary and Salary Increases	
Base salary, salary step increases, differentials (i.e., shift pay) and other forms of compensation are the same for classified and unclassified employees.	
Termination	
Covered by the provisions of the Civil Service Rules, thus termination must be for cause. Employees are entitled to Skelly rights and may appeal the termination to the Civil Service Commission or grieve the decision.	Not covered by the Civil Service Rules. Employees serve at the pleasure of the appointing authority and can be removed at any time for any non-discriminatory reason.

15. SENIORITY & LAYOFF

Some of the most commonly asked questions concerning the seniority and layoffs are listed below. This information is a guide, and individual situations should be reviewed with your assigned Employee Relations Analyst.

A. What is seniority?

Seniority is the number of hours you have continuously worked for the County in a regular position.

B. How is seniority calculated? What hours are included in seniority?

Seniority is all “regular” paid hours. This includes 001 time, paid sick leave, vacation, comp and holiday time.

C. Does overtime count toward seniority?

No, overtime does not count as seniority hours.

D. Does FMLA time count towards seniority?

FMLA or, Family Medical Leave, is not a type of leave, but rather a protection Act. There is no time associated with FMLA and it therefore does not count in seniority unless the employee was in a paid status.

E. Does time on workers’ compensation count towards seniority?

Time in a regular paid status counts. As long as you are on a paid work-related leave, the time does count towards seniority.

F. Does Extra Help time count? What if I “bought my extra help time?”

Time spent as extra help does not count towards seniority. Purchasing extra help time counts for pension purposes, but not for seniority purposes.

G. Does unclassified service count towards seniority?

Unclassified time does not count towards seniority.

H. What about an approved leave of absence?

As long as you are in a paid status, the time counts. Once you are in an unpaid status, the time you are out does not count towards seniority.

I. How does voluntary time off (VTO) affect seniority?

Voluntary time off reduces your pay rate, not the number of hours you are in a paid status. Therefore, VTO does not affect your seniority.

J. Why do I have less seniority than someone who was hired after me?

Check in with Human Resources if this is the case. The most common reasons are that you had some unpaid time that allowed the other person to achieve more seniority, or that the other person worked

somewhere else in the County that you were not aware of. Seniority is total service, not just time in a single classification.

K. What if I have the exact same seniority as another person – how is a tie broken?

Ties in seniority are resolved by the examination score for their present classifications, unless another method has been negotiated by your union. Check your MOU or call Human Resources for your specific situation.

L. I worked for the County for five years, then left to take another job for a couple years. I've been back for three years. How much seniority do I have?

You will need to talk to Human Resources for an exact determination, as most breaks in County service result in a restart of calculating seniority.

M. Does my probationary status affect my seniority?

If you are on probation, your prior classification seniority cannot be used in the new classification until you have passed your probationary period.

N. How are layoffs determined?

For classified employees, layoffs are conducted in accordance with the Civil Service Commission Rules. For unclassified employees, the department head can implement layoffs based on any criteria that they deem appropriate.

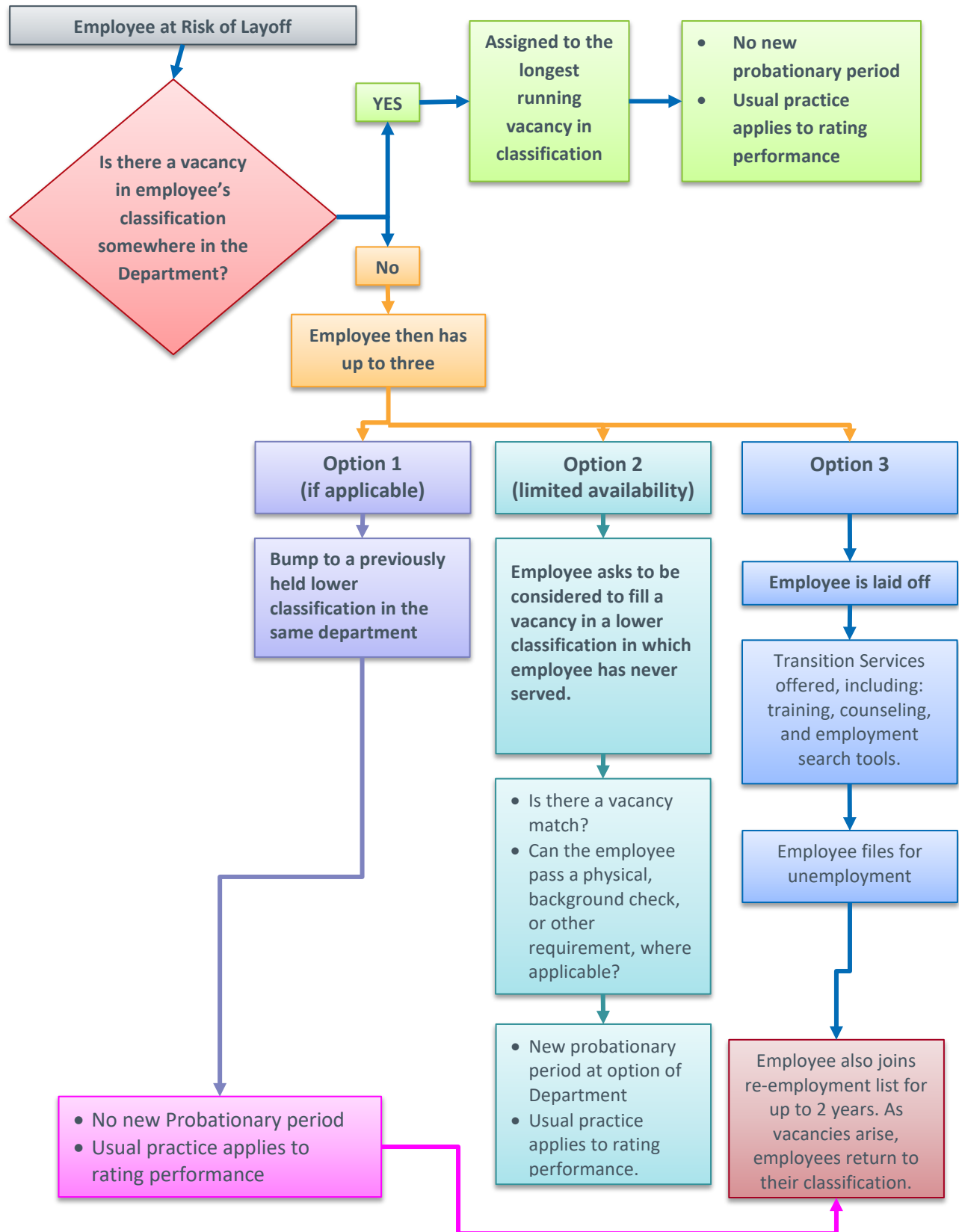
O. How does unclassified service impact seniority?

Generally, time spent in an unclassified status does not count in computing seniority in the classified service. If a classified employee takes an unclassified position, that action is considered a break in service for seniority purposes. If an employee resigns from the classified service to take an unclassified position and subsequently returns to classified service, their seniority would start at the point that they returned to classified service.

If an unclassified employee is appointed to a classified position, then that person is treated as a new hire for seniority purposes and their seniority would start when they are appointed into the classified position.

There is one exception to this rule. If a classified employee requests and is granted a leave of absence to accept a position in unclassified service, the time in the unclassified position is not considered a break in service for seniority purposes. Such leaves can be granted for one-year periods, up to a maximum of four years.

Process for Employees at Risk of Layoff



Post-Employment Rights

Layoff (EE does not take a severance)	Layoff (EE takes a severance)	Voluntary Demotion	Involuntary transfer to another position within the department (to same class)	Voluntary Separation (EE resigns)
<ul style="list-style-type: none"> Automatically placed on reemployment list for one year (can extend for an additional year, upon request) – CSR XVI (6) and MOUs If rehired from reemployment list (CSR XVI (6)): <ul style="list-style-type: none"> Sick leave balance restored Vacation accrual rate restored Seniority restored 	<ul style="list-style-type: none"> Automatically placed on reemployment list for one year (can extend for an additional year, upon request) – CSR XVI (6) <hr/> <p><i>Taking severance invalidates all other employment rights, including seniority (CSR XVI (6))</i></p>	<ul style="list-style-type: none"> Automatically placed on reemployment list (one year, may request second year) for formerly held classification (MOU language) 	<ul style="list-style-type: none"> No rights to return to former position. EE may request to be placed on a transfer list for one year (can extend for an additional year, each year) 	<ul style="list-style-type: none"> Upon separation, EE may be placed on a reinstatement list (one year, may request second year) for any classification for which they are qualified, upon request to HR Director (CSR VIII (5)(E)) Regardless of whether EE was on reinstatement list, if EE returns within 2 years of separation (5 for hard-to-fill positions), EE may get the following with department head recommendation to HR Director (6/12/03 HR memo): <ul style="list-style-type: none"> Sick leave balance restored Vacation accrual rate restored <p><i>Resignation severs all other employment rights, including seniority (CSR XV (1)(B))</i></p>
<p>Reemployment list: The first list used to fill any potential future vacancies; this list supersedes all other lists. Order on list determined by seniority (CSR VIII (5)(A)).</p>			<p>Reinstatement list: May be considered by department heads in addition to either the promotional eligible or general eligible lists, but cannot take precedence over the department reemployment or general reemployment eligible lists (CSR VIII (5)(E)).</p>	

Notes: Employees who occupy positions that have been identified for elimination may request to the HR Director that their names be placed on the appropriate reinstatement list prior to layoff (CSR VIII (5)(E)).

16. WORK SCHEDULES

A. Rest Breaks

It is clear that providing rest breaks is beneficial to both workers and the County. Full-time workers are allowed one fifteen-minute rest break prior to and after their mid-shift meal break. Part-time workers are allowed one fifteen-minute rest break during any four-hour work shift. For most workers, this equates to a lunch break and two rest breaks – one in the morning and one in the afternoon. The fifteen-minute rest breaks are paid, the mid-shift meal break is not.

Unusual circumstances may occasionally occur that do not allow workers to be released for rest breaks.

Rest breaks cannot be accumulated or “banked” for the purpose of taking longer breaks or leaving work early. If rest breaks are not taken, they are lost. Meal breaks must be no less than 1/2 hour, and cannot be skipped to reduce the workday.

B. Alternative Work Schedules

The County supports alternative or non-traditional work schedules that provide flexibility to employees, as long as such schedules do not impact coverage or service delivery. Examples of such alternative work schedules are “4/10”, “9/80”, telecommuting, Voluntary Time Off (VTO) and flexible hour schedules.

Some of the advantages of alternative work schedules are:

1. Flexibility to schedule work so as to balance work/family/personal responsibilities that can result in higher morale, greater productivity, and lower absenteeism. Such schedules may also allow employees to carpool, use public transportation, find easier child/dependent care arrangements, or have a smoother and less stressful commute.
2. Alternative work schedules allow management to expand office hours and staff based on workload. For example, a 4/10 schedule affords the opportunity to make the office available to the public for an additional two hours each day. A 9/80 schedule allows employees to complete paperwork during a one-hour period before the office opens to the public, freeing them up to provide public service during the other eight hours. In operations where the public tends to arrive at the beginning and end of the workday, staggered starting and ending times allow for all-day coverage.
3. Programs such as Voluntary Time Off (VTO) give employees the opportunity to take additional time off where it is consistent with the organization’s goals, and saves County funds in a measurable, predictable way. It also lessens the impact of that extra time off on the employee and their families by spreading the cost of taking that leave over the entire course of the year rather than in a lump sum.
4. Ability to link participation in alternative schedules to individual and group attendance and productivity goals. In offering an alternative schedule, management has the option of predicating such participation on the individual and/or work group meeting and maintaining stated attendance, coverage and production goals.

The following guidelines should be followed prior to implementing alternative work schedules:

- Maintenance or enhancement of service levels to the public should always take first priority in determining work schedules. 9/80 and 4/10 schedules often allow an extension of office hours, thus affording a higher level of service to the public. Alternative work schedules should never be entered into if they will negatively impact service levels. The availability of alternative work schedules varies from department to department and from position to position.
- Prior to discussing alternative work schedules with employees or the union, a sample schedule should be developed to determine whether an alternative work schedule is practical. You may find, for example, that a 4/10 schedule leaves too few employees for a given day's coverage, or that it may not be possible, under a 9/80 or 4/10 schedule, for all employees to have Monday or Friday as an off day.
- As a general rule, employees should be supervised during all work hours.
- 9/80 schedules require specific documentation of each employee's hours of work to preclude payment of overtime. A form documenting the schedule, available from your payroll/personnel specialist, must be completed for and signed by each employee on the 9/80 schedule.
- Alternative work schedules are a change in working conditions which require advance notification to the affected union(s) and a meet and confer process. If an agreement is reached on an alternative work schedule, it should be documented in a signed agreement. Employee & Labor Relations is available for consultation during this process and can provide sample agreements reached in other departments.

CONTACT EMPLOYEE & LABOR RELATIONS PRIOR TO ENGAGING IN ANY DISCUSSION WITH INDIVIDUAL EMPLOYEES OR UNIONS REGARDING 9/80 OR 4/10 SCHEDULES.

C. What are the various work schedules?

1. **Flexible Hours** – This is a schedule where an employee works a five day per week schedule but does not work the traditional hours of 8:00 a.m.-5:00 p.m. For example, an employee with childcare issues may be scheduled to work 8:30-5:00 with a ½ hour lunch break even if the office hours are 8:00-5:00. This schedule would be approved only if coverage and public service issues were not adversely impacted. Flexible hours also encompass work hours that are not the same every day. For example, if it could be accomplished without adversely impacting coverage or service levels, an employee could be scheduled to work from 8:00 a.m.-5:00 p.m. on Monday, Wednesday and Friday and 7:00-4:00 on Tuesday and Thursday in order to accommodate a school schedule. Flexible hours are not designed to allow employees to vary their schedules on a daily basis, as this would severely hamper the supervisor's ability to schedule work.
2. **9/80 Schedule** – Under the 9/80 schedule, an employee works 80 hours in nine, rather than ten, working days per pay period. The employee works eight 9-hour days, and one 8-hour day each pay period, and has one day off. The 8-hour day and the off day must fall on the same day of the week (e.g. off first Wednesday and 8-hour day second Wednesday). The Fair Labor Standard Act (FLSA) requires that employees working a 9/80 schedule must sign a declaration defining the work schedule. In order to implement a 9/80 schedule, you must notify the union(s) of your

intent to do so and must meet and confer with the union over the terms and conditions of the schedule. After meeting and conferring, a written agreement is developed, and is signed off on by management and the union. Prior to discussing 9/80 schedules with staff, contact Employee & Labor Relations.

3. **4/10 Schedule** – Under a 4/10 schedule, employees work eight 10-hour days per period, with two days off. In order to preclude payment of overtime, no more than forty hours can be worked in any week, thus, the two off days in the pay period must fall on opposite weeks. The off days do not have to be the same day of the week (e.g. the employee could work Monday-Thursday the first week of each pay period and Tuesday-Friday the second week). Prior to discussing 4/10 schedules with staff, contact Employee & Labor Relations. We have consulted with the Labor Commissioner’s Office and have been advised that the overtime after 8-hours law does not apply to the public sector.
4. **Voluntary Time Off** – VTO is a formal program that allows employee to request a reduction in their work hours by 1%, 2%, 5%, 10% or 20%. If approved, the employee’s hourly salary rate is reduced by the same percentage. Requests for VTO are subject to Department Head approval.
5. **Telecommuting** – The Telecommuting Program allows approved employees to work at a site other than a County office (usually home) and is a privilege, not a right. In order to apply to participate, an employee must complete an application that is reviewed by management. If approved, the employee and their supervisor must participate in a training session and develop a written telecommuting contract. Telecommuting may be terminated at the request of either the telecommuter or management.

D. What factors should be considered in deciding whether to offer alternative work schedules or telework?

Listed below are some of the major factors to consider prior to implementing or approving any alternative work schedule or telework:

- **The size of the work unit** – In a unit of three employees, it would be very difficult to offer a 4/10 or 9/80 schedule since any absence (vacation, sick leave, etc) which occurred on a scheduled day off would leave only one employee in the office.
- **Workload and coverage considerations** – Alternative schedules should be approved only if they do not adversely impact coverage and service levels.
- **Seasonal work fluctuations** – When an organization has periods of high activity, it may be appropriate to approve alternative work schedules for part, but not all, of the year. For example, an office involved in an annual tax roll program might need to suspend all alternative schedules for one or two months each year.

Individual and group performance and attendance – Individuals with performance or attendance problems should not be approved for alternative work schedules. In small groups, one employee’s attendance issues might preclude offering alternative schedules to other staff if that individual’s attendance causes coverage problems.

- **Criteria for evaluation of alternative schedule** – Any agreement should include criteria to evaluate and determine whether the alternative schedule will be continued. These criteria should include, at a minimum, coverage levels, measurement of service levels and customer complaints related to the schedule, and attendance levels. The agreement should include language stating that employees on alternative schedules may be returned to standard hours if they experience attendance or performance problems, or in case of staffing problems. It should also document that employees on jury duty, attending training, working out of classification, etc., may be required to return to a standard schedule during that period.
- **Shift differential** – Discuss with Employee & Labor Relations if agreeing to an alternative schedule would involve shift differential considerations.
- **Telework-** Teleworking is an arrangement that allows employees of the County of San Mateo to conduct their work remotely, from a designated area outside the office. Teleworking is a cooperative arrangement between employees, supervisors, and employing departments. The County's Telework Guide and Agreement outlines position and employee eligibility, procedures, and expectations regarding employees working remotely. All employees who are teleworking are expected to have a signed Telework Agreement on file and the conditions of that agreement must be revisited and agreed to on at least an annual basis. As outlined in Administrative Memo E-17, all County work must be performed in the State of California. Here is a link to the E-17 Administrative Memo: <https://www.smcgov.org/media/48111/download?inline=>

E. Informal Flex Schedules

Informal flex schedule arrangements involve situations wherein an employee works more than their scheduled hours on one day and, instead of being paid overtime, agrees to work fewer hours on another day. For example, an employee who normally works five 8-hour days may work 10 hours on Tuesday and 6 hours on Friday. The following is guidance on such schedules relative to overtime requirements under the Fair Labor Standards Act (FLSA) and for represented employees covered by a Memorandum of Understanding (MOU).

Section I applies only to employees who are covered by the FLSA. These are employees in Work Group 1. Section II applies to employees in Work Groups 2 and 5 who are exempt from the FLSA, but who are covered by a Memorandum of Understanding. **Prior to entering into discussions with an employee about an informal flex schedule, please call Employee & Labor Relations to confirm the employee’s Work Group.**

Section I – FLSA Covered Employees in Work Group 1

The informal flex schedule described above is acceptable and in accordance with the provisions of the FLSA as long as the following criteria are met:

- The employee must code the actual number of hours worked each day on the timecard. In the example above, the employee would code 10 hours of 001 time on Tuesday and 6 hours of 001 time on Friday.

- The employee must not work more than 40 hours in any week. In the case above, the employee worked 40 hours during the work week. It is not acceptable for an FLSA-covered employee to work extra hours in one week and take the time off in the following week. For example, an employee who is covered by the FLSA cannot work 10 hours on a day in the first week of a pay period and then work 6 hours on a day in the second week of the pay period without being paid overtime for the additional 2 hours worked in the first week. The FLSA requires overtime for all hours worked beyond 40 in any given week.

Section II – FLSA Exempt Employees in Work Groups 2 and 5

The FLSA provisions outlined above do not apply to employees in Work Groups 2, or 5. However, most employees in Work Groups 2 and 5 are covered by a Memorandum of Understanding that requires the payment of overtime for hours in excess of the 40-hour weekly work schedule. Prior to allowing a represented employee in Work Group 2 or 5 to flex their schedule beyond a single work week, make sure that the employee is voluntarily agreeing to the arrangement and then document the agreement in the form of a dated note. As for employees in Work Group 1, make sure that the timecard accurately reflects the actual number of hours worked on each workday.

Sample 4/10, 4/9 +4, and/or 9/80 Work Schedule Agreement

Prior to implementing any alternate work schedules, please call Employee & Labor Relations to discuss advanced written notice to the union(s) and meet & confer obligations.

(Dept/Division) and (Union)

(4/10 and/or 9/80) Schedule Pilot Project

(Name of particular units, if the entire division isn't a part of the pilot)

1. Goals and Duration of Pilot Project

This pilot project is entered into for the period (beginning date) through (date six months later).

The goals of the project are:

1. To maintain or improve overall productivity and service to the public.
2. To maintain or improve morale and teamwork.
3. To provide expanded hours of service to the public.
4. To reduce staff absences for medical and other appointments by scheduling such appointments on off-days.
5. To assure that no additional or disproportionate share of unit work falls on staff who do not choose an alternate work schedule.

2. Specific Conditions of the Project:

1. During the period of (beginning date) through (end date), each employee in the (specific unit(s) covered) shall indicate their desired work schedule. The numbers of employees needed to start at (time), (time), and (time) will be determined by management based on coverage needs. The scheduling options are:
 - a. Regular: Five consecutive workdays of nine consecutive hours each, between the hours of (earliest start time) and (latest end time), of which one hour will be the unpaid meal break.
 - b. (If offering 4/10) 4/10: Four consecutive workdays, of eleven consecutive hours each between the hours of (earliest start time) and (latest end time), of which one hour will be the unpaid meal break.
 - c. (If offering 9/80) 9/80: A two-week schedule providing nine workdays during that period, within the following conditions:
 - 1) One work week of five workdays, consisting of four days of 9 work hours and one day of 8 work hours (each with an unpaid one-hour meal break); and
 - 2) One work week of four days of 9 work hours (with an unpaid one-hour meal break) and one day off; the day off on this schedule must fall on the same day of the week as the 8-hour day in the other week.

It is understood and agreed to by all parties to this agreement, including employees participating in the 9/80 schedule, that for the purpose of designating the seven consecutive day work period for the calculation of overtime, one work period shall commence at the midpoint of the employee's shift of the 8 hour day and end at the midpoint on the day off; the other work period shall commence at the midpoint of the day off and end at the midpoint of the 8 hour day. These periods, for each employee participating in the 9/80 schedule, shall be specifically designated and be declared, in accordance with the Fair Labor Standards Act.

2. The (managers/unit supervisors) shall then draw up the final schedule for the pilot project period, taking into account their program's staffing and coverage needs throughout the work week, with the highest priority period being peak usage hours of (list peak usage hours).
3. The following shall be the criteria for any individual's participation in the 4/10 and 9/80 schedule:
 - a. A current standard performance evaluation.
 - b. Willingness to be flexible regarding the specific work schedule.
 - c. Satisfactory attendance. Individuals with excessive unscheduled absences (expect to be asked to define this at the meet and confer) will be moved to a regular eight-hour workday.
 - d. It is understood that an employee who is still on their initial County probationary period or who has received written notice of performance deficiencies may be required to work either a 5/8 schedule or the same schedule as the unit supervisor for the duration of that probationary period or defined period of corrective action.
4. Schedules, once selected and assigned, will be for the duration of the pilot program. However, it is understood that during the pilot project, the schedules assigned may have to be varied by the unit supervisor because of unanticipated or unusual circumstances that cause staffing needs to change. Employees on jury duty, attending training, or working out-of-class may be required to return to a standard schedule during that period of time. Requests to withdraw from or re-enter the pilot project will be evaluated and determined by the manager.
5. (If not all units are part of the pilot project): Individuals who are participating in the 4/10 or 9/80 schedule and who, during the pilot project, transfer out of their original unit, will not continue to participate in the 4/10 or 9/80 schedule at a new unit not covered by the pilot project.
6. If an individual should transfer or be hired into a unit covered by this pilot project during the project period, they will move into the schedule of the individual who vacated the position being filled. If the new employee is not filling a vacated position, they may have a 4/10 or 9/80 work schedule upon agreement of the unit supervisor, and provided their desired schedule fits with those of other unit members to assure the unit's service and coverage requirements are met.

7. Schedules must fit the actual work pattern of the unit in such a manner that work is not distributed disproportionately upon one worker or group of workers because of the days off they have chosen, or because they have not chosen a 4/10 or 9/80 work schedule.
8. The core workday(s) will be (day(s) of the week); no worker may schedule their regular 4/10 or 9/80 day off on that day(s).
9. No person will be permitted work-out-of-classification pay solely because of the absence of another employee on a regularly scheduled 4/10 or 9/80 day off.
10. (If offering 4/10) Employees on the 4/10 work schedule will be required to make the following holiday adjustments when the holiday is taken off:
 - a. Work an 8/5 schedule that week and take the holiday off, or
 - b. Retain their 4/10 schedule and charge their time as follows:
 - 1) If the holiday falls on the employee’s regularly scheduled day off, the employee will have eight (8) hours added to their holiday balance.
 - 2) If the holiday falls on the employee’s regularly scheduled workday, the employee will code their timecard for eight (8) hours holiday pay, and will code two (2) hours of vacation, compensatory time, or accrued holiday time.
 - c. An employee on a 4/10 schedule who works a holiday will be paid at time-and-one-half for eight (8) hours of work on the holiday; the remaining two (2) hours worked shall be at straight time, unless such hours are overtime (work in excess of 40 hours during the week). The employee shall also be credited with eight (8) hours added to their holiday accrual balance.
11. (If offering 9/80) Employees on the 9/80 schedule will be required to make the following holiday adjustments when the holiday is taken off:
 - a. Work an 8/5 schedule for that two-week pay period and take the holiday off, or
 - b. Retain their 9/80 schedule and charge their time as follows:
 - 1) If the holiday falls on the employee’s regular scheduled day off, the employee will have eight (8) hours added to their holiday balance.
 - 2) If the holiday falls on the employee’s regularly scheduled nine-hour workday, the employee will code their timecard for eight (8) hours holiday pay, and will be charged one hour vacation, compensatory time, or accrued holiday time.
 - c. An employee on a 9/80 schedule who works a holiday will be paid at time-and-one-half for eight hours of work on the holiday; the remaining one hour worked shall be at straight time, unless such hour is overtime (work in excess of forty hours during the week). The employee shall also be credited with eight hours added to their holiday accrual balance.

3. Specific Conditions of the Project:

1. The pilot 4/10 and 9/80 work schedule as set forth herein shall be effective from (beginning date) through (end date).
2. A meeting shall be scheduled by the parties ninety (90) days after the commencement of this pilot project, to evaluate and resolve any start-up problems. No later than six (6) weeks

prior to the end of the pilot project, the parties agree to meet to evaluate whether or in what fashion the project should be continued, modified, or abandoned.

3. The evaluation factors for the 4/10 and 9/80 pilot project shall be:
 - a. Level of service: It is critical that the level of service (remain the same or improve) during the pilot project as during the corresponding period for the previous year. This will be based on past performance evaluations of the unit's employees as compared to their current performance in the following areas:
 - 1) Completion of work on schedule: (be able to define this)
 - 2) Coverage and availability of staff: No decrease in the general productivity, i.e., amount and quality of work, or level of service will be expected. (Give more details as needed.)
 - b. Complaints:
 - 1) Complaints from other offices – there shall be no increase in complaints from other County departments.
 - 2) Complaints from the public – there shall be no increase in complaints from the public regarding reduced service or responsiveness.
 - 3) Complaints from staff – there shall be no increase in complaints from staff regarding uneven distribution of work, time spent unproductively, or unavailability of co-workers for work customarily requiring assistance.
 - c. Unscheduled time off and time accrual:
 - 1) Unscheduled absences – Unscheduled sick leave shall be kept to a minimum. A comparison will be made between sick leave use during the pilot project and use for the corresponding period in the previous year. Unacceptable levels of absenteeism will result in termination of 4/10 and 9/80 privileges for an individual or termination of the 4/10 and 9/80 schedules unit-wide.
 - 2) Coverage problems – In order to implement a 4/10 or 9/80 schedule, it is essential that employees are at their workstations ready to begin work at their scheduled start times, that employees honor break and meal break schedules and return from such breaks on time, and that employees do not leave earlier than scheduled. Any problems in these areas would result in termination of 4/10 or 9/80 privileges for an individual or termination of the 4/10 or 9/80 schedule unit-wide.
 - 3) Overtime and compensatory time accrual – there shall be no increase in overtime or compensatory time accruals as a result of inability to complete work or need for adequate coverage.

17. LEAVES OF ABSENCE

There are several kinds of leaves of absence, and each has prerequisites, time limits, and limited bases upon which it can be granted. The purpose of this Section is not to define all of the leave of absence terms and conditions, but to provide general information about the three types of leave that employees most often request:

- Leave of Absence for Employee's Own Health Condition (Medical Leave)
- Parental Leave
- Leave of Absence for Personal Reasons

For more information about the different types of leaves of absences the County offers, please visit: <https://www.smcgov.org/hr/leave-absence>. Please call the County's ADA/TWA/LOA Coordinator at 363-4738 if you have any questions regarding leaves of absence.

If you have questions about Disability Leaves of Absence under the Worker's Compensation Program, more information can be found at <https://www.smcgov.org/hr/workers-compensation>.

The following are answers to the most frequently asked questions pertaining to Leaves of Absence:

A. If a Leave of Absence is approved, do I have to hold the employee's position vacant?

The granting of a leave of absence also grants the employee the right to return to a position in the same or equivalent classification, in the same department, as they held at the time the leave was granted. If needed, you can temporarily fill the employee's position through the use of Work out of Classification (WOC), Temporary hiring (six or more months of expected absence), or extra-help hiring (less than six months of expected absence) options.

You do not have to hold the employee's individual position vacant, but there must be a position in the same or equivalent classification in your department available for the employee to return to. Normally, you should try to allow the employee to return to their prior unit and shift. If you must fill the employee's specific position and have them report to a different unit or shift upon their return, contact Employee & Labor Relations for consultation prior to making the change.

The granting of any leave of absence is based on the presumption that the employee intends to return to work upon expiration of the leave. If, for example, an employee requests a Personal Leave of Absence to accept other employment but wants to keep a position available in case the new job does not work out, you should not approve the request.

B. What is a Leave of Absence for Illness or Injury (Medical Leave)?

Leaves of absence for a non-job incurred illness or injury may be granted for a maximum of twenty-six bi-weekly pay periods (one year). A medical leave of absence request must be supported by a physician's statement that includes sufficient information to determine if the leave is appropriate (i.e., if

the leave request is for elective surgery, then granting it is more discretionary than if the leave is for emergency medical treatment).

The employee may use any accrued sick leave during his or her leave of absence if they are away from work due to their own injury or illness. The use of accrued vacation, compensatory time or holiday hours is not required, but is permitted at the employee's request. For medical leaves of absence to care for a family member with a serious medical condition covered by FMLA/CFRA (please see below), an employee may use their accrued sick leave, but it is not required. All intermittent leaves require advance review and approval by the Disability Program Manager.

An employee in an unpaid status during a leave of absence for illness or injury is entitled to two bi-weekly pay periods of payment of the County's portion of health, dental, life, and long-term disability insurance premiums for each year of County service (or major fraction thereof), up to a maximum of twenty-six bi-weekly pay periods payment of premiums (one year).

C. What is Family and Medical Leave (FMLA)?

Every medical leave of absence must be evaluated to determine whether or not it meets the criteria for Family and Medical Leave Act (FMLA) and California Family Rights Act (CFRA) coverage. FMLA/CFRA entitle the employee to up to twelve weeks of leave (paid or unpaid) within a calendar year. FMLA/CFRA run concurrently with each other except in the case of pregnancy. The County's FMLA Policy can be accessed at: <https://www.smcgov.org/hr/leave-employees-own-health-condition>

D. What conditions must be met for an employee to be eligible for FMLA/CFRA consideration?

In order for an employee to be eligible for FMLA/CFRA, the following conditions must be met:

- The employee must have been a permanent, probationary, temporary and/or Extra Help employee continuously for at least 12 months.
- The employee must have worked (001 time) at least 1,250 hours in the 12 months immediately prior to requesting a leave of absence. Extra Help hours do count towards the 1,250 hour threshold. Non-work hours (sick leave, vacation, holiday, unpaid time) do not count towards the 1,250 hours threshold.
- The leave must be for one of the following reasons:
 - The employee's own serious health condition.
 - The care of the employee's spouse, domestic partner, parent, child or young adult dependent with a serious health condition. Care of other relatives, including but not limited to grandparents/grandchildren, aunts/uncles, or in-laws, does not qualify under FMLA/CFRA.
 - Birth or adoption of a child.
 - Placement in the employee's home of a child in foster care.

What is a “Serious Health Condition”?

There are very specific circumstances under which an employee is entitled to FMLA/CFRA leave. Complex rules determine whether the employee or family member has a “serious health condition” covered by FMLA/CFRA. Managers and supervisors should not make their own judgments as to whether a condition qualifies as “serious”, but instead should refer these questions to the County’s ADA/TWA/LOA Coordinator.

What should be included on the medical certification form from the doctor?

For an employee’s own illness:

- The date on which the serious health condition commenced;
- The probable duration of the condition;
- That the employee is unable to perform the functions of his or her position.

For a family member’s illness:

- The date on which the serious health condition commenced;
- The probable duration of the condition;
- An estimate of the amount of time the employee needs to care for the family member;
- Verification that the serious health condition warrants the participation of the employee to provide care during the period of treatment.

What is “Reduced” or “Intermittent” FMLA/CFRA leave?

Depending on the specific medical condition, this leave may be taken in blocks of time or intermittently. The FMLA/CFRA gives covered employees the right to take off up to 480 hours (12 weeks) per year in “reduced” or “intermittent” leave for a serious health condition. Reduced leave is a reduction in the employee’s normal hours per day or hours per week (e.g. reduction from 8 to 6 hours daily, or every Wednesday off). Intermittent leave can be taken at varying times of the day or week and may be taken in increments as small as one hour. All intermittent leaves require advance review and approval by the Disability Program Manager.

How do I know whether a request for time off should be considered FMLA?

An employee does not have to specifically request an “FMLA leave” and does not have to use the term “FMLA” or “Family and Medical Leave” to put a supervisor or manager on notice that the time off they are requesting may meet FMLA/CFRA provisions. Immediately contact the County’s ADA/TWA/LOA Coordinator for guidance if you have questions when an employee indicates to you that they need medical leave for a serious health condition. It is the employer’s responsibility, i.e. the County, to determine if requested leave is covered by the FMLA/CFRA, and to notify the employee in writing that their leave of absence is covered in whole or in part by the FMLA/CFRA.

How does designating a leave of absence as FMLA/CFRA benefit the employee?

The main benefit for regular County employees is that the County continues to pay its share of the health insurance cost premium for up to 12 weeks while the employee is on this type of leave, while the employee pays only their usual cost. Extra Help employees are not eligible for this benefit since the County does not make a contribution to health coverage for them. It is important to encourage employees to discuss all benefit issues with the Benefits Division of the Human Resources Department whenever they will be out on an unpaid status.

County policy already requires the County to return regular employees to the same or similar position, so FMLA/CFRA does not provide any additional reinstatement rights. Extra Help employees who are eligible for and request an FMLA/CFRA leave of absence are entitled to return to the same or similar Extra Help assignment. This is an additional right for them.

Absences that qualify for FMLA/CFRA are considered protected time off and an employee cannot be counseled or disciplined for taking FMLA/CFRA time off.

E. What is a Parental Leave of Absence?

Parental leave allows employees, regardless of gender, to take a period of time not to exceed thirteen bi-weekly pay periods (six months) to fulfill parenting responsibilities during the period of one year following their child's birth, or one year following the placement of a child with an employee via adoption or foster care. Employees who must assume custody of a minor are also eligible. Employees may use accrued vacation, comp time, holiday credits, and/or up to 30 working days of sick time during their parental leave. However, there is no requirement for an employee to use any of their accrued paid time. This type of leave also needs to be evaluated for FMLA/CFRA eligibility. Please keep in mind that if eligible, the CFRA guarantees new parents the right to take up to 12 weeks of parental leave, so if you have a situation where you are considering denying parental leave in whole or in part, please call Employee & Labor Relations first.

F. What is a Personal Leave of Absence?

Employees can request a leave of absence for personal reasons for a period not to exceed thirteen bi-weekly pay periods (six months). The employee may have very personal reasons for the leave, or may disclose that it is for educational purposes, to take an extended trip, to build a house, etc. The granting of a personal leave of absence is at the Department Head's discretion and is based on the Department's operational needs for that specific period of time as well as the severity of the employee's need. The employee must use all vacation and holiday credits prior to going into unpaid status. The entitlement to payment of the County's portion of health, dental, life, and long-term disability insurance premiums ends on the last day of two full bi-weekly pay periods in which the employee is on an unpaid personal leave of absence.

G. Can employees combine different types of leaves of absence?

A female employee giving birth to a child can request a medical leave of absence for the period she is certified as disabled and unable to work for medical reasons. After she has been medically cleared to return to work, she can then request up to thirteen bi-weekly pay periods (six months) of parental leave. However, she cannot add on a personal leave of absence on top of a medical and parental leave.

An employee's entire leave of absence period, whether it is strictly a medical leave of absence, or a medical leave combined with parental leave, cannot exceed twenty-six bi-weekly pay periods (one year) in duration.

H. How are leaves of absence approved and how are the forms processed?

The employee should submit a "Leave of Absence Request Form" via Workday to their supervisor, who will review the request, approve the form, and it will then be routed in Workday to the Department Head or Division Director. For medical leave of absence requests, a statement from the employee's physician indicating what period of time the employee will be unable to work must be attached. Please contact Employee & Labor Relations for guidance if you are having difficulty obtaining a completed "Leave of Absence Request Form" from the employee. The Department Head or Division Director will either approve or deny the request, keeping in mind that those eligible employees with FMLA/CFRA-qualified requests cannot be denied.

If the request for leave is denied, the Department Head/Division Director the denial will be routed back to the employee in Workday. Denial of requested leave in whole or in part at the Department Head level may be appealed by the employee to the Human Resources Director, whose decision is final.

If the request for leave is approved, the Department Head/Division Director approves the form in Workday and it is then routed to the County's ADA/TWA/LOA Coordinator. Upon receipt, they shall review the request for compliance with Ordinance requirements and FMLA/CFRA eligibility. The ADA/TWA/LOA Coordinator then provides the Department Head/Division Director with a draft letter and a copy of the approved "Leave of Absence Request Form" to send to the employee notifying them that the leave has been approved. It is important that the employee be sent this letter as quickly as possible, as it provides information regarding FMLA/CFRA eligibility, the date the leave of absence ends, any requirements that must be met prior to returning back to work, and other instructions. The Department Head/Division Director also sends a copy of the employee's letter to the Civil Service personnel file, and to the department's Payroll/Personnel team.

I. What process is used when an employee returns to work after a leave of absence?

When an employee is on a medical leave of absence, the employee must provide a statement from their medical professional prior to returning to work. This statement must certify that the employee is able to return to work and resume their normal duties or must specify any restrictions or limitations on the employee's ability to perform their normal duties.

If the medical professional indicates that there are restrictions or limitations, this medical statement must be provided to the department at least five (5) working days prior to the employee's scheduled return date, so that the department can make a determination as to whether the restrictions or limitations can be met. Managers and supervisors are encouraged to contact the County's ADA/TWA/LOA Coordinator to assist with making this determination. A TWA (Temporary Work Agreement) is used to document the modified work arrangement, if one is feasible.

Leave of Absence Instructions and Information

This Leave of Absence Request Form should be used to request time off from work in excess of two biweekly pay periods, either paid or unpaid, for all reasons except for work related injuries and worker's compensation claims. For work-related injuries and worker's compensation claims refer to the Workers' Compensation Benefits Package.

Please note that an employee granted a leave of absence, unless otherwise provided, has the right to return to a position in the same classification, or equivalent classification in the same department as they held at the time the leave was granted.

Types of Leave and How They May Interconnect

Leave of Absence for Employee's Own Health Condition (Medical Leave)

Leaves of absence for an employee's own health condition or on account of illness or injury, which are not job incurred. This includes childbirth, disabilities caused or contributed to by pregnancy, miscarriage and abortion or care for an immediate family member who has suffered an illness or injury. A physician's statement substantiating the condition is required. Unpaid leave may be granted up to a maximum period of 26 full biweekly pay periods.

Leave of Absence for Personal Reasons

Leaves of absence for personal reasons including extended vacation. All vacation and holiday time must be used prior to being granted unpaid leave. Leave may be granted for a maximum period of 13 full biweekly pay periods.

Parental Leave of Absence

An employee may be granted a leave of absence to fulfill parenting responsibilities during the period of 1 year following the child's birth, or 1 year following the placement of a child with an employee in connection with the adoption or foster care for the child by the employee. Leave under this section shall be for a maximum period of 13 biweekly pay periods including all time in a paid or non-paid status. An employee is not required to exhaust paid leave prior to being granted Parental Leave but may use up to 30 working days of sick leave.

Military Leave of Absence

The provisions of the Military and Veterans Code of the State of California shall govern military leave of County employees. Military orders must be attached to the Military Leave request.

Educational Leave of Absence with Pay

(For Educational Leave of Absence without Pay use Leave of Absence for Personal Reasons). Educational leaves may be granted to employees for a maximum of 65 working days during a 52 biweekly period for the purpose of attending a formal training or educational course of study. Eligibility for such leaves will be limited to employees with at least 13 biweekly periods of continuous service and who are not extra help or temporary. Such leaves will be granted only in cases where there is a reasonable expectation that the employee's work performance or value to the County will be enhanced as a result of the course of study. A separate Leave of Absence Request form must accompany this form.

Other Leave

For more information regarding these types of leaves of absence, refer to the County's Ordinance Code:

- Leave of Absence to Accept Temporary Employment Outside the County Government
- Leave of Absence to Accept a Position in the Unclassified Service
- Leave of Absence to Fill an Unexpired Term in an Elective Office
- Absence Due to Required Attendance in Court.

Medical Statement:

A statement of an attending licensed health care professional certifying the nature, extent, and probable period of your absence MUST be attached to the request if indicated. If you are released to return to work with limitations or restrictions on your ability to perform your normal job duties, you must submit the medical statement listing these limitations/restrictions at least five working days prior to the scheduled return-to-work date. The restrictions/limitations will be reviewed to determine whether you can return to work under these conditions.

Leave of Absence Request Form

Employees should notify their supervisors or managers of the need for leave as soon as possible and request the leave in Workday.

An FMLA/CFRA covered leave of absence for a block of continuous time away from work can be requested in Workday. To find out how to request a leave in Workday, visit the [Leave of Absence Quick Reference Card \(QRC\)](#) on the Workday Connect resource site: .

Intermittent leaves of absence are not entered into Workday. The following two forms must be completed by the employee and submitted to their department for signature. The forms should then be forwarded to Risk Management for processing.

- The Leave of Absence Request Form ([click to access form](#)) should be completed by the employee when an intermittent leave is being requested.

The Medical Certification Form ([click to access form](#)) should be completed by the health care provider and should include the frequency and duration of the intermittent leave as determined by the health care provider.

18. LABOR RELATIONS

"Labor Relations" refers to interactions between an employer (management) and an employee organization (union). For public sector employers in the State of California, the Meyers-Milias-Brown Act (MMBA) governs labor relations. The MMBA's purpose is to "promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment." The MMBA expresses general principles and rights. The San Mateo County Employer-Employee & Labor Relations (EER) Policy defines how these principles and rights are implemented by providing specific procedures for certifying and decertifying employee organizations, conducting representation elections, and other issues relating to relations between the County and unions. The County's EER Policy can be accessed at:

<http://hr.smcgov.org/documents/employer-employee-relations-policy>

A. What is the role of a union?

MMBA provides employees the right to choose a union to represent them in matters of wages, hours and other terms and conditions of employment. MMBA also requires that management "meet and confer" or "consult" with elected representatives. Management must provide the union reasonable advance notification of any change in personnel policies, practices or working conditions, and afford the union an opportunity to meet with management prior to implementing any such change.

B. What is the difference between a union business agent and a steward?

Unions generally have paid employees known as "business agents," "union representatives," "labor representatives," "worksite organizers," etc. These individuals are employed and paid by the union. These business agents generally represent the larger interests of the organization, such as bargaining MOUs, representing employees during disciplinary hearings, and seeking new members.

Union stewards differ from business agents in that they are employees of the County, not of the union. They are elected or are appointed by the union membership to serve as representatives of the larger body of employees in the portion of the unit they represent. Stewards are frequently involved in working with employees on informal complaints and grievances, representing employees during investigatory interviews, and participating in "meet and confer" sessions.

C. What are a steward's rights regarding attendance at meetings?

Stewards are entitled to reasonable paid official time (also called "release time") to represent employees in investigations or at grievance meetings, to attend meetings where matters affecting employees' "terms and conditions" of employment are discussed, and to "meet and confer" on issues involving the unit. For instance, the budget hearings conducted by the Board of Supervisors are matters affecting the terms and conditions of employment, and stewards would be entitled to reasonable release time to attend such meetings. Similarly, if a department planned on making a change to working conditions, a steward(s) would be entitled to attend a meeting to "meet and confer" over the proposed change. The number of stewards who are allowed release time is specifically referenced in the MOUs.

D. When is an employee entitled to union representation at a meeting with their supervisor?

The “Weingarten” decision states that an employee is entitled to representation at any meeting where an investigatory interview is being conducted or where the employee might reasonably believe that they are being questioned and that questioning could lead to disciplinary action. The employee must request such representation – there is no obligation to advise the employee of this right. Please see [Section 8F](#) for more information on Weingarten rights.

E. How do stewards request release time, and must it always be granted?

When a meeting is being held for which release time is provided, the union sends a written request to Employee & Labor Relations indicating the date, time, and nature of the meeting, and the name of the employee(s) to be released. The MOUs state that requests are to be submitted at least two working days prior to the meeting “whenever possible.” We have reminded all employee organizations of the two-day notification requirement and advised them that failure to provide two days notice may result in denial of the request. Employee & Labor Relations reviews the request to determine whether the meeting fits the criteria for release time, and then contacts the supervisor/manager of the employee for whom release time is being requested, and notifies them of the time, date, location and nature of the meeting.

The operating department has the authority to approve or deny the release of the employee based on workload and coverage considerations. You should make every effort to release the employee, particularly if the request is made in advance of the meeting. If the employee cannot be released, you should immediately contact Employee & Labor Relations to discuss the rationale for denying the request. Requests should only be denied in cases where the employee’s absence will adversely impact County services. In cases where the release time is requested well in advance, the supervisor/manager should take all possible steps to cover for the employee if their absence would otherwise be disapproved.

Some unions use a more informal method of requesting release time by merely having the employee ask their supervisor to be released to attend the meeting. If this system is working for you, there is no need to follow the more formal process described above. If you are having problems with an informal process, contact Employee & Labor Relations and we will notify the union of the need to follow the formal process defined in their MOU.

F. What is "prior notification," and why is it required?

By statute and contract, unions have the right to be notified about planned changes in the terms and conditions of employment, and to meet and express their views prior to implementation of the changes. Management has a duty to meet in good faith and to give full consideration to the opinions and suggestions of unions in the meet and confer process.

The Employee & Labor Relations Division should be consulted regarding the process for meeting and conferring with employee organizations when there is a rule or workplace change that impacts that

organization's employees, from the initiation of this process to conclusion. Please ensure Employee & Labor Relations is involved whenever you initiate a change in order to determine if you must or should notice employee organizations and/or meet and confer and so they can assist with the meetings with the labor organizations.

G. What is "meet and confer?"

As part of the County's relationship with the employee organizations, and as required by California law, management must provide reasonable advance written notice to employee organizations whenever it intends to implement a rule or workplace change that will likely affect employees in that department or unit. San Mateo County has incorporated this requirement into each of its Memoranda of Understanding (MOUs).

At the employee organization's request, management has the obligation to meet and confer regarding the matter before implementation occurs, even if you have involved the employees in developing the planned changes and they are in agreement.

Who is covered?

All County Departments and Divisions are covered and these guidelines should be considered and used by all County management staff. One or more employee organizations may be involved, depending on the issue and which employees are likely to be affected.

What is the identifying trigger?

The need to provide employee organization(s) with advance notice and an opportunity to "meet and confer" is triggered any time the management of a department or sub-unit of a department plans to make a workplace change, and that change is likely to affect represented employees in some manner, even if the represented employees have agreed to the change or it is considered a positive change. Workplace changes include issues involving wages, hours, and other terms and conditions of employment.

Some examples of common situations that would trigger the need to notify employee organizations and meet and confer if requested, include the following:

- Establishing or adjusting a departmental sick leave policy
 - Example: Management would like to implement a rule that all employees in the unit must call a specific sick line phone extension if they are calling in sick.
- Changing a unit's working hours
 - Example: Management would like to change the "closing time" of an office from 5:00 p.m. to 7:00 p.m. two days per week.
- Establishing or adjusting an alternative work schedule
 - Example: Management wants to establish a 9/80 workweek in place of the traditional 5/8 workweek as a means to allow greater work/life balance for the employees and to better serve the department's clients.
- Establishing or adjusting performance standards

- Example: Management wants to establish standards for the quality or quantity of work to be performed.

Not all changes trigger meet and confer obligations. The County's Employer-Employee & Labor Relations Policy states that "the County retains the exclusive right to determine the methods, means, and personnel by which County government operations are to be conducted." Decisions to make these types of changes are not subject to meet and confer. However, the County is still required to notify the union(s) of the change and meet and confer over the impact of the change on the represented employees.

For example, a change in your computer system has the result of certain employees being required to enter and write their own reports, replacing the old method of support staff doing this work for them. While the computer change itself does not require notice to employee organizations, the impact the change may have on those employees being required to enter their own data and write reports does require notice to employee organizations.

While the above examples are helpful, they are not exhaustive. Departments should contact their Employee & Labor Relations representative for guidance any time a change is contemplated.

What do we do if we decide to make a change?

After consulting with Employee & Labor Relations, notify the employee organization(s) of the change in writing. The notice should describe the proposed change in detail and explain why the change is being planned. The written notice should be sent a minimum of three weeks before the proposed implementation date, providing ample time for the employee organization(s) to receive the letter and decide if they want to meet, as well as time to actually hold the meeting. It is always recommended to provide as much advanced notice of a change as possible. In cases involving major or complex changes, more time should be allowed as multiple meetings may be necessary. Please see [Sample Notice to Union\(s\)](#).

If not contacted by the employee organization(s) requesting to meet, you can move forward with implementing the change. If contacted by an employee organization, set a mutually agreeable date and time to meet.

What do we do to prepare for the meeting?

It is important that you adequately prepare so that you present yourself at the meeting as being organized and knowledgeable about the specifics of the change and the reasons for the change. It is essential that management be able to explain the issue that is generating the need for the change.

We recommend that prior to the meeting you develop a document (or chart) that illustrates how the unit operates now, and how the unit will operate after the change. You might use separate pages for each or do a side-by-side comparison chart. Additionally, you should list the primary reasons for the change, and the benefits to the department or unit attributable to the proposed change, as well as any benefits to the affected employees.

You will have the most success with the implementation if any potential issues are resolved beforehand. Remember that the union may present facts or issues that you had not considered. Anticipating and troubleshooting potential faults or problems with the proposed plan is helpful. For example, put yourself in the place of the employees and the union, and analyze the proposed change from their perspective.

Who attends the meeting?

You can expect a union representative, the union steward and one or more affected employees to attend. The union gets to select which employees attend, and often employees selected may not be those that will be directly impacted. Management can object to the number of employees if it impacts coverage or other operational needs.

Management may have one or more representatives attend. Generally, Department Heads do not attend, as they might be required to review any final decision that is made. Employee & Labor Relations should be included in the meeting as well.

What do we do at the meeting?

Start the meeting by explaining the proposed change and the reasons for the change. You should use the comparison document you prepared as a guide to assist you in explaining the change, if applicable, and you might also prepare an outline of the plan to share with those in attendance.

It is essential to remember that you must participate in this meeting in good faith. The Meyers-Milias-Brown Act, governing management-labor relationships in California local governments, mandates that you shall have the “obligation personally to meet and confer promptly upon request” and “continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation.”

The representative(s) may ask questions during your presentation. It is appropriate to answer questions that you feel comfortable answering. It is also appropriate to respond by saying that you’ll have to research the question asked and that you will get back to them. It is essential that you do then get back to the representative(s) with the answers.

After you have completed your presentation, the employee organization representative(s) may offer their opinion on your proposal and present alternative suggestions. It is important to listen to their point of view. The employee organization may present facts or issues that you had not considered. Also, if an alternative approach is presented that meets your stated goals, you must fairly consider it and adopt it unless it involves additional costs or results in operational problems.

The union may also say they need to consider the proposal and ask to schedule another meeting to present their response. Always schedule this next meeting and agree to a date at the time it is proposed, ensuring that the process moves forward. Call Employee & Labor Relations for guidance any time an employee organization cancels a meeting at the last minute or appears to be delaying or slowing down the process.

Always take what the employee organization(s) representative(s) say under advisement and assure those at the meeting that you will get back to them. You should not become argumentative at the table, and only commit to changes at the table that you are sure are within County and Departmental management parameters. The decision to make changes or implement as originally planned should usually be made only after a subsequent meeting with management and Employee & Labor Relations.

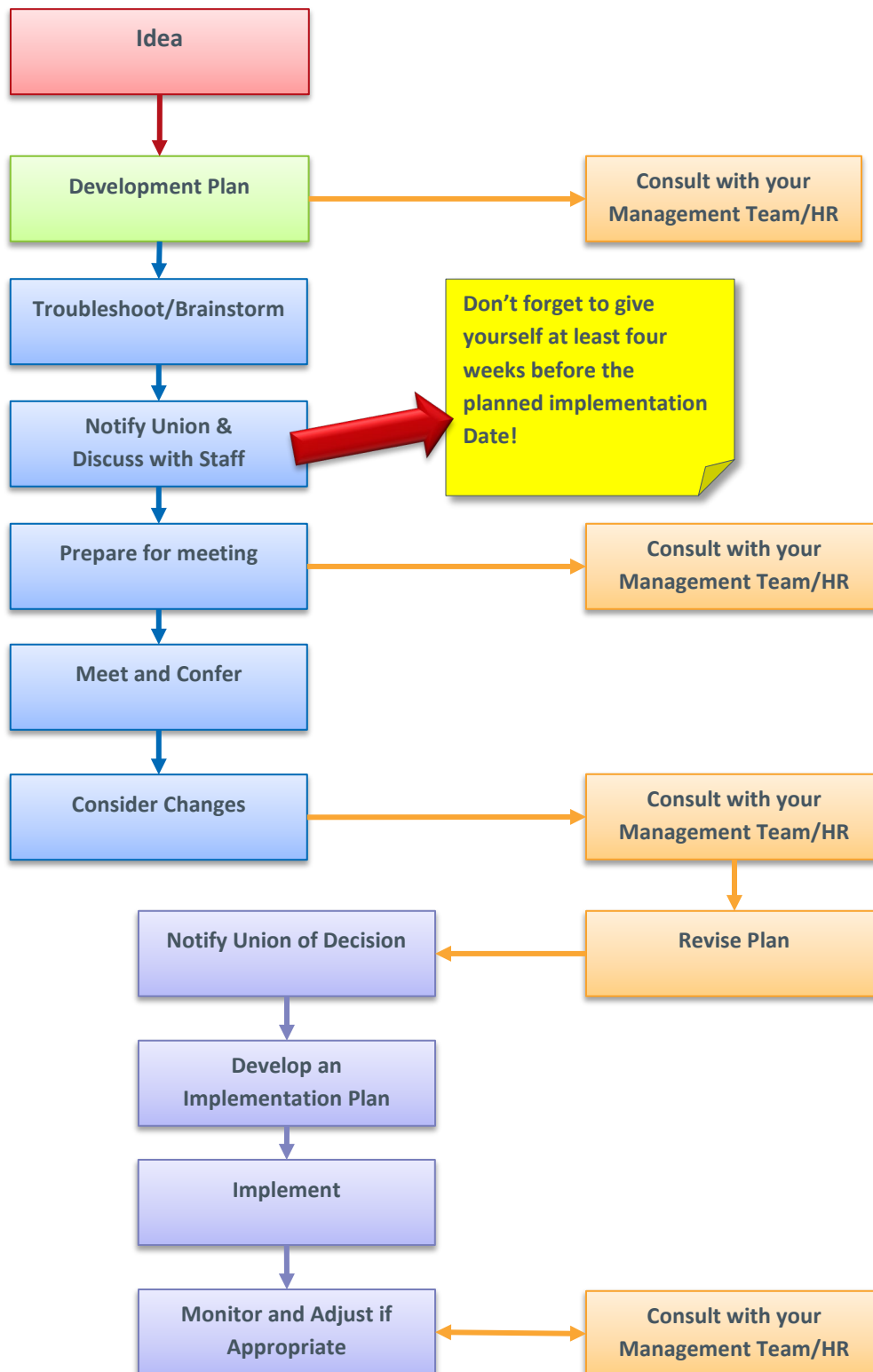
What do we do after the meet and confer?

Meet with upper management and/or Human Resources to finalize the plan. Analyze proposed changes and alternatives that were made at the meeting and incorporate them if they allow you to reach your objective without incurring excess cost or experiencing operational problems.

In your file, document the specific reasons why any proposed change/alternative has not been incorporated into the plan. This documentation will assist you later if your final plan is questioned, or if unforeseeable issues arise during implementation. If you do not have union agreement on the plan you intend to implement, contact Employee & Labor Relations to discuss this process and receive guidance on how to proceed.

Contact the employee representative(s) and verbally advise them of what you can and cannot agree to. Prepare a written document outlining the final plan and advise the employee representative(s) of the final plan. You will also need to communicate this information to the affected employees.

“Meet and Confer” Flowchart



H. What can I do to encourage successful labor relations?

- Be alert to the usual causes of potential grievances, and correct minor irritations promptly.
- Be familiar with the MOU(s) and other written policies/agreements.
- Do not knowingly violate the MOU. When a mistake is made, take ownership and move to promptly correct it.
- Stay informed about what is going on in your unit. Take an active role in monitoring morale and be available to help solve problems.
- Encourage and respond to constructive suggestions.
- Don't make promises you can't keep or you don't have the authority to deliver.
- Follow through on what you do promise.
- Keep the union informed about what is going on that may be within their scope of concern. Don't let the union learn about changes from their members before they hear it from you.
- Be prepared for any meeting with the union – both to present your own issues and respond to theirs.
- Be credible and trustworthy – model the behavior you want in return.
- When provoked, remain calm and professional. When challenged, be diplomatic. If limit setting is needed, do it calmly and respectfully.
- Assume good will – don't ascribe malicious intent until all the evidence is in. You can always escalate.
- Attend to the relationship. How you behave when it doesn't matter affects how you will be treated when it matters a lot.

Sample Notice to Union(S)

[DATE]

[UNION PERSON]

[UNION NAME]

[ADDRESS]

Dear [UNION PERSON]:

We have been experiencing problems with weekend registrations in our customer service center. We are required to provide registration coverage 24 hours per day and 7 days per week. Currently, staff are assigned weekends on a rotating basis (four weekends on and four weekends off). The problem we are encountering is with sick calls. Currently, when someone calls in sick, it is up to either the service center supervisor or the on-duty staff to call around and see if anyone is willing to come in and cover. We have experienced situations where no staff is available to cover, which puts us in a situation of having staff work double shifts on weekends.

To remedy this situation, we are proposing that staff be placed on-call for weekends. The on-call staff would receive on-call compensation and would be paid overtime if called in as provided in the MOU. We would first ask for volunteers for on-call assignments and then, for weekends where there are not volunteers, we would assign staff to be on-call, on a rotating basis, based on seniority. This way, staff would know well in advance when their on-call weekend was to occur. We would also allow staff to “trade” assigned on-call weekends due to conflicts with other commitments. We would start by having one individual on-call each weekend on a trial basis. This would work as long as sick calls are kept to a minimum. If we continue to experience multiple sick calls on the same weekend, we would need to add a second individual to each weekend on-call assignment. We have not polled staff about this, but I believe that there will be staff that want to be assigned on-call in order to earn the extra money.

Attached is a sample on-call schedule showing how this would work. We plan to implement the on-call system beginning [DATE – MINIMUM OF 6 WEEKS BEFORE IMPLEMENTATION]. Please call me at [PHONE] if you have any questions or if you wish to meet regarding this matter. To facilitate timely implementation, I would request that, if you do wish to meet, that meeting be held no later than [DATE – THREE WEEKS FROM DATE OF LETTER].

Sincerely,

[NAME]

[TITLE]

cc: Department Head
Employee & Labor Relations

Positions Represented by Unions

MOUs are found online at <http://hr.smcgov.org/memorandum-understanding-mou>

- **American Federation of State, County and Municipal Employee (AFSCME)**
 - Healthcare positions (excluding Physicians, Registered Nurses, and Clerical/Support positions)
 - Institutional Services (Cooks, Dietitians, Food Service Workers, etc.)
 - Parks Department (excluding Clerical & Support positions)
 - Planning Department (excluding Clerical & Support positions)
 - Plant and Equipment Maintenance (Custodians, Stationary Engineers, Utility Workers, etc.)
 - Human Services positions (Benefits Analysts, Social Workers, Deputy Public Guardians, etc)
 - Public Safety Dispatchers
 - Telephone Operators
 - AFSCME Extra-Help employees
- **Building and Construction Trades (BCTC)**
 - Road Maintenance Workers, Road Equipment Operators, Equipment Mechanics, Plumbers, Electricians, Painters, Carpenters, Locksmiths
- **California Nurses' Association (CNA)**
 - Registered Nurses
- **Deputy Sheriff's Association (DSA)**
 - Safety: Deputy Sheriffs, Correctional Officers, District Attorney's Inspectors
 - Non-Safety: Deputy Coroners, Criminalists, Forensic Specialists, ID Technicians, Property Officers, Forensic Autopsy Technicians and Community Service Officers
- **Organization of Sheriff's Lieutenants (OSL)**
 - Sheriff's Lieutenants
- **Organization of Sheriff's Sergeants (OSS)**
 - Sheriffs Sergeants, Senior District Attorney's Inspectors
- **Probation and Detention Association (PDA)**
 - Probation Officers, Group Supervisors, Institution Services Managers
- **San Mateo County Council of Engineers (SMCCE)**
 - Professional Engineers
- **Service Employee International Union (SEIU)**
 - Accountants, Administrative Assistants, Buyers, and miscellaneous administrative positions
 - Appraisers and Auditors
 - Child Support Analysts
 - Clerical and Support Services positions
 - Information Services positions
 - Library positions
 - SEIU Extra-Help employees
- **Union of American Physicians & Dentists (UAPD)**
 - Physicians, Dentists and Psychiatrists

19. REFERENCE CHECKS

When considering someone for a position, you need to consider several factors and determine critical background areas for the position.

For line staff, suggested areas include:

- ✓ Job knowledge/previous relevant work experience
- ✓ Quality and Quantity of Work
- ✓ Work Habits/Attendance
- ✓ Interpersonal Skills
- ✓ Initiative shown/Decisions made
- ✓ Corrective/Disciplinary actions
- ✓ Relationship with supervisors and management personnel
- ✓ General conduct (type of behavior)

For supervisory/management positions, suggested areas include:

- ✓ Job knowledge/related accomplishments
- ✓ Reasons for prior job changes
- ✓ Management style
- ✓ Personal attributes
- ✓ Strengths
- ✓ Areas for improvement
- ✓ Relationships with direct reports and clients/customers

Guidelines for conducting reference interviews for applicants are:

- ✓ Prepare your questions in advance.
- ✓ Use a format that will facilitate note-taking.
- ✓ Let reference know that information will be kept confidential.
- ✓ Be clear and specific.
- ✓ Be persuasive and persistent.
- ✓ Paraphrase responses back and ask for clarification.
- ✓ As you progress through your list of references, focus on areas where concerns and/or gaps of information appear to exist.
- ✓ Call reference back if you still have questions.

If the applicant is a current or former County employee, contact Human Resources (phone 363-4343) to access and review the applicant’s Civil Service personnel file available through Workday. You may also contact your Employee & Labor Relations representative for further guidance.

Occasionally you may receive written or telephonic reference checks requesting information about current or former employees.

A. What guidelines should I follow?

We recommend that the following guidelines be followed in responding to employment questions:

- a. If you have any reason to believe that the person requesting information is not a potential employer or a licensing agency, do not give out information.
- b. Provide information only in response to a verbal or written request for information. Do not volunteer information without a request for such information.
- c. Do not give out any information that is not accurate, factual, and documented in the personnel file.
- d. If you do provide information, you must provide any significant negative information as well as positive information. (This point is explained in greater detail in section C below).
- e. The personnel file itself, or any written documents from the file should be released only with a release from the former employee or in response to a subpoena. Prior to releasing information in response to a subpoena, you should contact the County Attorney's Office to ensure the correct legal process is followed.
- f. Medical information should never be provided unless you receive an original signed release from the employee, and the release includes a specific statement that authorizes the release of that information. Care needs to be taken to ensure that you do not provide information beyond the scope of any medical request.
- g. Do not provide information if there is any connection, other than the employer-employee relationship, between you and the person about whom information is being sought, without prior consultation with Employee & Labor Relations or your Talent Acquisition Analyst.

B. What other facts do I need to know?

California statute provides a qualified privilege for information given to potential employers or licensing agencies who contact the County seeking information. A qualified privilege means that no damages can result from your action, provided that you are not found to have been malicious. In addition to the guidance in Section A above, the following criteria must also be met:

- a. Any statement you make must be made without malice. You and the County would be at peril if it could be shown that any statements which you made were made out of ill will toward the employee, if you lacked reasonable grounds for believing your statements to be true, or if the statements are made for a reason other than to protect the interest of the person seeking information (for instance, if your statements are made because of a previous grudge, a desire for someone else to get the job, etc). If there is any fact that could indicate that you would be responding other than as an objective person, you should not respond. In these cases, seek guidance from your supervisor as to whether he or she, or some other manager, might provide the response.

- b. You must honestly believe the information you give to be true and should never give out erroneous information. To meet these criteria, we recommend that you give out factual information borne out by the person's personnel file and that you not express opinions. If an employee was dismissed for excessive absenteeism and the dismissal and reason are documented in the file, it would be appropriate to state this fact. If the employee resigned and there is no written documentation stating that the employee was absent too often, it would not be appropriate to express your opinion that the employee's attendance record was below standard.

C. What are the most common pitfalls?

The two primary pitfalls to avoid are (a) providing information to anyone not considered a "person with an interest" (California statute), and (b) providing positive information without disclosing significant negative information (California case law).

- a. A "person with an interest" is defined as someone who is in good faith considering hiring your employee, or is from a licensing agency. You should never give out information if you have reason to believe that the person is not who they say they are or if they are merely curious about an employee.
- b. California case law has held employers liable for providing positive feedback to a future employer, while withholding significant negative information. The most extreme example was that of a school that provided positive reviews of a vice principal to a prospective employer but failed to disclose that the vice principal had molested a child. Other examples that would clearly apply include acts of violence, stealing, and dishonesty. If you have an employee or former employee with a record of one or more negative acts, the best practice is to discuss with Employee & Labor Relations before communicating anything to the reference checker.

While violence, physical abuse, and stealing are clear examples of significant negative acts, managers and supervisors will need to use their judgment as to whether lesser acts meet this test. For example, you are not obligated to disclose a singular incident in which an employee was dishonest in explaining why he was 10 minutes late for work one day; but you would need to disclose that a person was dishonest in falsifying records that resulted in a family friend receiving preferential treatment over other clients.

Since this is an area that is likely to expose you to the most liability, we advise you to contact Employee & Labor Relations prior to providing reference information anytime it involves an employee or former employee who was terminated for cause, resigned in lieu of dismissal, or was subjected to the equivalent of a suspension as a result of wrongful conduct. Employee & Labor Relations can assist you in providing your response based on that employee's specific circumstances.

Online Resources

Updated February 21, 2025

- County Intranet: https://smcgov.sharepoint.com/Pages/intra_home.aspx
 - Supervisor Resources
 - Supervisor Online Support (SOS): <https://smcgov.sharepoint.com/sites/sos>
- County Ordinance Code: http://library.municode.com/HTML/16029/level2/TIT2AD_ART2.7COEM.html#TOPTITLE
- County Charter: <https://www.smcgov.org/media/152378/download?inline=>
- Administrative Memos: <http://cmo.smcgov.org/administrative-memorandums>
- Human Resources Department Website: <http://hr.smcgov.org>
 - Employee & Labor Relations: <http://hr.smcgov.org/employee-and-labor-relations>
 - MOUs, Employer-Employee Relations Policy, Job Classification Table, Benefits-At-A-Glance for Bargaining Units, Contact Employee and Labor Relations
 - Civil Service Commission Rules: <https://www.smcgov.org/media/99411/download?inline=>
 - Talent Acquisition: <https://www.smcgov.org/hr/talent-acquisitionJob>
Descriptions: <http://hr.smcgov.org/job-descriptions>
 - Classification & Compensation: <http://hr.smcgov.org/classification-compensation>
 - Policies: <http://hr.smcgov.org/county-policies>
 - County Initiatives: <http://hr.smcgov.org/initiatives>
 - Employee Engagement, CPMS (Collaborative Performance Management System), Agile Organization
 - Employee Benefits: <http://hr.smcgov.org/employee-benefits>
 - EAP (Employee Assistance Program): <http://hr.smcgov.org/employee-assistance-program-eap>
 - Employee Wellness Program & Work-Life Services: <http://hr.smcgov.org/employee-wellness-program-work-life-services>
 - Learning & Development: <http://hr.smcgov.org/training-development>
 - LMS (Learning Management System): <http://hr.smcgov.org/learning-management-system-lms>
- Leaves of Absences: <https://hr.smcgov.org/landing-page/leave-absence>
- Recruitment Hiring Guide for Managers: [Click to access Recruitment Hiring Guide for Managers](#)
- Risk Management/ Worker’s Compensation/ ADA: <https://www.smcgov.org/hr/risk-management-safety>
- Equal Employment Opportunity (EEO): <https://www.smcgov.org/hr/equal-employment-opportunity>

Bulletin Table of Contents

<i>Bulletin 1: Material Relied On</i>	185
<i>Bulletin 2: Skelly Process</i>	186
<i>Bulletin 3: Personnel Files</i>	188
<i>Bulletin 4: Appeals Before the Civil Service Commission</i>	190
<i>Bulletin 5: Dealing with the Impaired Employee</i>	197
<i>Bulletin 6: Performance Objectives, Standards and Evaluations</i>	199
<i>Bulletin 7: Inter-Departmental Transfers (Probationary Periods)</i>	202
<i>Bulletin 8: Employees' Right to Representation</i>	203
<i>Bulletin 9: Work-Out-Of-Class</i>	205
<i>Bulletin 10: Non-Punitive Discipline Program</i>	207
<i>Bulletin 11: Investigating Employee Complaints</i>	210
<i>Bulletin 12: Use of Vacation or Other Accrued Leave in Lieu of Sick Leave</i>	216
<i>Bulletin 13: Rest Breaks</i>	218
<i>Bulletin 14: AB 1008 “Ban the Box” Expansion – Changes in Hiring Procedures Regarding Criminal History Consideration</i>	219
<i>Bulletin 15: Denial of Merit Increases</i>	221
<i>Bulletin 16: Assignment to Work at a Different Location (Formerly Called Administrative Leave)</i> 222	
<i>Bulletin 17: Vacation Time for Probationary Employees</i>	226
<i>Bulletin 18: Alternate Work Schedules</i>	227
<i>Bulletin 19: Family School Partnership Act</i>	229
<i>Bulletin 20: Potential Criminal Actions/Arrests/Convictions</i>	230
<i>Bulletin 21: Medical Statements</i>	232
<i>Bulletin 22: Bereavement Leave</i>	234
<i>Bulletin 23: Contracting Out</i>	235
<i>Bulletin 24: Guidance: “Meet and Confer” Obligations and Process</i>	236
<i>Bulletin 25: Reference Checks</i>	242
<i>Bulletin 26: Breaks for Nursing Mothers</i>	245

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 2015

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 1
Material Relied On

When it is your intent to initiate disciplinary action, a Skelly "Intent" letter is issued to the employee. In the last paragraph of the letter, you advise the employee that "All written materials, reports and documents upon which this action is based are attached." These "materials, reports, and documents" are referred to as the "materials relied on" and usually consist of counseling notes, written complaints from customers or co-workers, attendance records, previous corrective/disciplinary actions taken, and other documentation.

The material relied on is the evidence upon which you are basing the proposed discipline, and no other material may subsequently be introduced to support the disciplinary action (unless a revised Skelly intent letter is issued to supersede the first).

To insure that you are prepared to provide the material relied on, you should follow these steps:

1. Conduct a thorough, unbiased investigation of the incident(s)
2. Interview the employee(s) involved to hear his/her side of the story
3. Interview any witnesses and secure signed statements from them
4. Assemble all documents, including notes from your interviews of the employee(s) and witnesses, into a file

It may be necessary to code material released to the employee or his/her union representative to protect the identity of individuals. This requirement usually involves the release of medical or law enforcement information which can be tied to individual persons or of personnel records for employees other than the individual being disciplined.

Any questions relating to disclosure of information should be referred to Employee Relations.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 2015

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 2
Skelly Process

BACKGROUND

The Skelly decision (Skelly vs. California Personnel Board) determined that a permanent public employee has a property interest in his/her job, which is protected by "due process," entitling him/her to a hearing prior to discipline. In this context, discipline includes suspensions, demotions, and dismissals. The Skelly court concluded that, at a minimum, safeguards must include:

- (1) notice of the proposed action;
- (2) the reasons for the proposed action;
- (3) a copy of the charges and materials upon which the action is based; and
- (4) the right to respond, either orally or in writing, to the authority initially imposing discipline.

Requirements (1) and (2) above are met by issuing an "Intent" letter to the employee. This letter notifies the employee of the proposed action, and states the reasons for the proposed action. Please see sample Skelly Letters in the Employee Relations Handbook.

Requirement (3) is met by issuing to the employee the Skelly Intent letter along with the "material relied on" which is the evidence upon which you are basing the proposed discipline. The Skelly Intent letter states "All written materials, reports and documents upon which this action is based are attached." (See ER Bulletin #1 for more information on Materials Relied On.)

Requirement (4) is met by affording the employee an opportunity to present his/her side of the controversy before a reasonably impartial and non-involved reviewer. This reviewer must be a person with authority either to make the final decision on the proposed action or to recommend what that final decision should be. This hearing, if requested, must be held prior to issuance of the decision letter, and the decision letter should address issues raised in the hearing.

Procedures for the Skelly Process

1. Prior to initiating any disciplinary action, the supervisor and/or manager will conduct investigatory interviews with the employee and any witnesses to determine the facts involved.
2. Should the above interviews indicate that discipline is warranted, the Skelly Intent letter will be written and signed by a manager, at the Manager II level or above, who has reviewed the facts and concurs with the proposed discipline.
3. If the employee requests a meeting to respond to the charges, a reviewer will be appointed to hear the employee's response. This reviewer will be the Department Head, the Assistant Department Head, or any another manager not involved in the decision to issue the Skelly Intent letter. This same reviewer would also consider any written appeal submitted by the employee. Please see "The Role of the Skelly Officer" found in section 5 (<http://hr.smcgov.org/employee-relations-handbook>) of the Employee Relations Handbook.
4. Following the above hearing, the reviewer will, make a recommendation to the Department Head to either sustain the discipline proposed in the Skelly Intent letter, impose a lesser discipline, or impose no discipline at all. This recommendation and the decision of the Department Head must be based on: 1) the information contained in the Skelly Intent letter and the associated materials relied on; 2) the information provided in the employee's written response; and 3) the information provided in the hearing.
5. The Department Head will decide what, if any disciplinary action to impose. If the decision is to impose discipline, the Department Head will issue a "Decision" letter to the employee. Please see [sample Skelly Letters](#) in the Employee Relations Handbook. Note that this letter addresses the issues raised by the employee in the hearing.

The Employee Relations Division is available to assist you in all aspects of this process. Please feel free to call your Employee Relations Analyst

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 2015

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 3
Personnel Files

Various types of personnel files are maintained in the County. This bulletin explains what the various files are, where they are maintained, and what types of materials should be placed in each file.

1. The Civil Service Personnel File is the official personnel record for each employee and is maintained in the Human Resources Department. This file contains copies of all personnel actions, Leave of Absence forms, performance evaluations, disciplinary letters, reprimands, and other records of an employee's employment history. An employee must be provided with a copy of any document to be placed in this file.
2. The Department Personnel Files are maintained in many of the larger departments to provide immediate access to records. These files contain the same material as the Civil Service Personnel file. A copy of any document placed in the Department file should be forwarded to Human Resources for filing in the Civil Service Personnel File.
3. Supervisory Files are the informal files maintained by supervisors for each of their employees. These files contain permanent records, and records of a temporary nature. Examples of records that may be maintained on a permanent basis are copies of performance evaluations and documents signed by the employee acknowledging receipt of a policy or procedure (e.g., incompatible activities). Supervisors may also wish to maintain a record of the name and phone number of an individual designated by the employee to contact in case of emergency.

Documents to be maintained on a temporary basis include anecdotal records or notes made by the supervisor regarding the employee's performance or conduct (positive or negative), memos from the supervisor to the employee confirming counseling sessions, memos or notes from third parties regarding the employee, and samples of completed work products. These notes, memos, and work samples form the basis for regular performance discussions, and should be used in preparing evaluations and recommending personnel actions. Any documentation of performance/conduct problems or of superior performance should be shared with the employee

as soon as possible. Once an employee has corrected a problem, anecdotal notes relative to that problem should be purged from the file. For example, documentation of an employee's attendance problem should be purged from the file once that employee's attendance record indicates he/she has corrected the problem.

When an employee transfers within the department, the supervisory file should be forwarded to the new supervisor, after being purged of any extraneous or outdated records. When an employee terminates employment with the County, these files should be maintained for two years and then may be destroyed.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 2015

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 4
Appeals Before the Civil Service Commission

Civil Service Rule XIV provides that employees may request an appeal of disciplinary actions before the Civil Service Commission. Rule XII provides that employees may appeal to the Commission for a review of substandard performance evaluations.

The attached guidelines are to assist Departments in preparing for and presenting cases before the Commission. Please note that these are general guidelines which may vary from case to case. The method of presenting individual cases will be decided in a meeting between the department, Employee & Labor Relations, and County Counsel.

The attached guidelines are based on the presumption that the employee's performance was substandard or did warrant disciplinary action. You may want to review these guidelines prior to issuing a substandard performance evaluation or taking disciplinary action to insure that you are in good position to defend your action if necessary. You are also encouraged to contact your Employee & Labor Relations Analyst to review your case prior to issuing a substandard performance evaluation or taking any disciplinary action.

Guidelines for Preparing for and Presenting Cases Before the Civil Service Commission

Appeals of Substandard Performance Evaluations

REFERENCE

Section 4 of Civil Service Rule XII provides that "Permanent employees may appeal to the Commission for a review of performance evaluations which are below a standard score or rating set by the Director." Rule XII further states that " Review, as used in this section, is defined as a fact-finding examination for the purpose of detecting and correcting any abuse of discretion."

Upon receipt of a written appeal for a review by the employee, Human Resources places the request for appeal on the agenda for the next meeting of the Civil Service Commission. At that meeting, the Commission will first decide whether to accomplish the review through a fact-finding committee of 2 commissioners or by the Commission as a whole. The Commission will then set a mutually agreeable date for the fact-finding review.

PREPARATION

A meeting will be scheduled by the attorney assigned to the case as soon as possible after an employee files an appeal. The appellant's immediate supervisor, the supervisor's manager, County Counsel, and the Employee & Labor Relations Analyst should attend this meeting. Any other management representatives with relevant input (e.g., EEO Manager) should also attend.

At this meeting, the team should put together the department's case, and anticipate and develop responses to the appellant's case. The department's case consists of:

- a. A listing of the standards/objectives which the appellant failed to meet
- b. Evidence, documents and/or oral testimony that the employee failed to meet the standards/objectives
- c. Evidence that the employee was counseled and given an opportunity to improve prior to issuance of the evaluation

A determination will also be made at this meeting as to whether Counsel will represent the Department before the Commission or whether the Department will represent itself. This determination will be based on the complexity of the case and on the experience level of the supervisor and manager involved.

CASE SUMMARY

A short summary (one page if possible) should be presented to the Commission and used as a "taking paper." This "taking paper" will help to keep the Commission focused on the pertinent issues of the case, and will assist the Department representative in presenting the case in a logical, understandable manner. The paper should contain:

- a. A listing of the standards/objectives not being met
- b. Concise statements describing how the employee failed to meet the standards including data on the employee's production/error rate, or complaints received
- c. A chronology of significant events including:
 - Beginning and ending dates of the rating period
 - Dates of specific incidents reflecting substandard performance
 - Dates of counseling sessions during the rating period
- d. Brief statements addressing anticipated allegations from the appellant

DEPARTMENT'S PRESENTATION

The Department should be represented before the Commission by the appellant's immediate supervisor, a manager from the Department who is familiar with the case, and, if necessary, by Counsel to the Department. The determination of whether Counsel will be required to represent the Department will be made at the initial planning meeting described above. If other individuals are needed to provide specific information or testimony, they should be called as witnesses and dismissed after testifying rather than remaining for the entire session.

- a. The case is introduced by briefly going over the "taking paper" and stating that the purpose of the fact-finding examination is to identify and correct any abuse of discretion.
- b. Either the manager or the supervisor presents the specifics of the case. To ensure clarity, only one person should present. The other can be called on to explain specific points, but the supervisor and manager should not divide up the presentation as this tends to cause the Commission to lose focus. The presenter should direct the Commission's attention to the "taking paper" and should refer to it as a guide. The case should be presented in a factual manner, without impugning the character or guessing at the motives of the appellant. Care should be taken to avoid references to the "attitude" of the appellant - focus on observable performance.
- c. During the appellant's presentation, management representatives should take notes of points raised by the appellant. Any inaccurate or misleading statements of significance should be briefly rebutted at the end of the appellant's presentation. Statements made by the appellant that are not pertinent, or that would not be of significance to the Commission should be ignored. It is vital to focus the Commission on management's case, rather than allow the appellant to obscure the case by engaging the Department in debates or discussions of irrelevant issues. All management representatives must be aware of the non-verbal communications they present to the Commission. Without knowing it, you can easily give these signals by rolling your eyes,

frowning, or shaking your head in disbelief at statements made by the appellant or his/her representative. The Commission may interpret such non-verbal communications as an indication that the individual does not openly listen to the employee on the job.

- d. The Department's case is concluded by making a closing statement summarizing the standards that were not met, describing how the employee failed to meet the standards, and stating that the Department did not abuse its discretion in evaluating the appellant.

Guidelines for Preparing for and Presenting Cases Before the Civil Service Commission

Appeals of Disciplinary Actions

REFERENCE

Civil Service Rule XIV provides that employees may appeal dismissal, demotion, or suspension actions to the Commission. In cases involving dismissal, demotion, or suspension, an appeal hearing by the Commission is mandatory, if requested by the employee. In cases other than dismissal, demotion, or suspension, a hearing is discretionary with the Commission. When discretionary, the Commission decides whether to have a hearing after a review of written materials submitted by the employee and by the Department or after a brief oral summary of the merits of the case by the petitioner.

Section 5.A. of Civil Service Rule XI provides that "The appointing authority may terminate a probationary employee at any time during the probationary period without the right of hearing by or appeal to the Commission except when an employee alleges, and substantiates in writing, discrimination ... as the reason for rejection."

Upon receipt of a request for an appeal hearing, Human Resources places the appeal request on the agenda of the next meeting of the Civil Service Commission. At that meeting, the Commission will decide whether to hear the appeal. At that meeting, County Counsel may argue, for the Department, that a hearing should not be granted. If the Commission decides to grant a hearing, or if a hearing is mandatory, the Commission will set a mutually agreeable date for the hearing.

PREPARATION

A preparatory meeting will be scheduled by the attorney assigned to the case as soon as possible after an employee files an appeal. The appellant's immediate supervisor, any managers involved in the decision to take disciplinary action, County Counsel, and the Employee & Labor Relations Analyst should attend this meeting. Any other management representatives with relevant input (e.g., EEO Manager) should also attend.

At this meeting, the team should put together the department's case, and anticipate and develop responses to the appellant's case. The department's case consists of:

- a. The Rule - The rule(s) which the employee has broken as cited in the Skelly letter.
- b. The Facts - A description of how the employee broke the rule(s). This is taken from the body of the Skelly letter.
- c. Substantial Proof - Evidence to show that the employee did violate the rule(s). This proof is in the form of the "material relied on" used by the deciding official in making the decision to discipline.

In addition to the above, the department's case should also answer the following questions:

- a. Was the employee given forewarning or foreknowledge of the possible consequences of misconduct? This usually consists of recordation of counseling sessions, but may also include policies signed by the employee.
- b. Did the department, before administering discipline, make an effort to determine whether the employee did, in fact, violate the rule(s)?
- c. Was the investigation conducted fairly and objectively?
- d. Have the rules and discipline been applied equitably and without discrimination to all employees?
- e. Was the degree of discipline reasonably related to the seriousness of the proven offense and to the record of the employee in his/her service with the organization?

CASE SUMMARY

A brief summary (one page if possible) will be presented to the Commission and used as a "taking paper." This "taking paper" will help to keep the Commission focused on the pertinent issues of the case, and will assist the Department representative in presenting the case in a logical and understandable manner. The paper should include:

- a. The rule which was violated
- b. A brief description of how the employee violated the rule
- c. A chronology of significant events including:
 - Dates of specific incidents leading to discipline
 - Dates of counseling sessions
 - Dates of any prior discipline
- d. Brief statements addressing anticipated allegations from the appellant

DEPARTMENT'S PRESENTATION

The Department should be represented before the Commission by the appellant's immediate supervisor, a manager from the Department who is familiar with the case, and by County Counsel. If other individuals are needed to provide specific information or testimony, they should be called in as witnesses and dismissed after testifying rather than remaining for the entire session. The specifics of each case will guide its presentation, but a general guide is as follows:

- a. Counsel introduces the case, raising any pertinent legal points, and briefly going over the "taking paper."
- b. Counsel calls witnesses to present the Department's case. Counsel will have gone over questions to be asked and answers to be given in advance of the hearing. The witnesses should present the case in a factual manner, without impugning the character of or assigning motives to the appellant. Care should be taken by witnesses to avoid references to the "attitude" of the appellant. The focus should be on observable performance.

During the presentation, Counsel may introduce exhibits to support the Department's case. These should include the Skelly decision letter, and the material relied on by the deciding official in determining to take disciplinary action.

- c. During the appellant's presentation, management representatives should take notes of points raised by the appellant. Any inaccurate or misleading statements of significance should be briefly rebutted at the end of the appellant's presentation. Statements made by the appellant that are not pertinent, or that would not be of significance to the Commission should be ignored. It is vital to focus the Commission on management's case, rather than allow the appellant to obscure the case by engaging the Department in debates or discussions of irrelevant issues.

All management representatives must be aware of the non-verbal communications they present to the Commission. Without knowing it, you can easily give these signals by rolling your eyes, frowning, or shaking your head in disbelief at statements made by the appellant or his/her representative. The Commission may interpret such non-verbal communications as an indication that the individual does not openly listen to the employee on the job.

- d. Counsel provides a closing statement summarizing the standards that were not met, describing how the employee failed to meet the standards, and stating that the Department did not abuse its discretion in evaluating the appellant.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 2015

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 5
Dealing with the Impaired Employee

We have received a number of questions asking what to do when you suspect that an employee is under the influence of alcohol or drugs while at work. Listed below are recommended steps to follow:

1. First, you should annotate your observations. The attached checklist is an excellent document to use for this purpose.

Next, you should ask another manager to observe the employee and complete a checklist without reviewing the checklist you have completed. In this way, you have two independent observations of the employee.

2. If the other manager concurs that the employee is under the influence of alcohol or drugs and impaired from performing his/her duties, you should send the employee home. Do not allow the employee to drive. You should call a friend or family member or call and pay a taxi to take them home. Do not drive the employee, nor allow any other county employee (other than a family member) to drive them home.
3. When the employee returns to work, conduct an investigative interview. Ask the employee if he/she was under the influence of alcohol or drugs. If he/she acknowledges that he/she was under the influence, ask why he/she came to work in that condition. If the employee denies being under the influence, show him/her the checklist and ask for an explanation of the appearance/behavior you observed. Since this interview may lead to disciplinary action, the employee is entitled to union representation if he/she requests it.
4. Once you have completed your investigation, call Employee Relations for guidance on the appropriate action to take.

Note: For employees covered under the Department of Transportation Drug and Alcohol Testing Program, follow the steps outlined in the Policies and Procedures for Supervisors and Managers provided in the Drug and Alcohol Testing Program training.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 6
Performance Objectives, Standards and Evaluations

Issues regarding the process of establishing performance expectations, monitoring performance against those expectations and resultant performance evaluations have been brought our attention. Also based upon employee appeals of below standard evaluations to the Civil Service Commission, we have been alerted to what the Commission members are looking for to support such a determination:

1. Performance standards and objectives have to be clearly communicated to employees. A Standard is what you measure an employee against i.e. "observes handbook for processing of all requests" or "writes and communicates messages and requests for services clearly." An Objective is a specific goal i.e. "prepares 60 documents per hour" or "install five software packages by December 1, 2013." This communication should be in writing, and the employee and the manager should discuss any areas of the expectations that are unclear or changed from any previous expectations. When an employee is new on the job or has their expectations amended, a new copy should be given to the employee. I have attached a sample form that could be used as a "receipt form" to document the date, the classification and the employee's acknowledgement that the attached standards are to be used in subsequent performance reviews. Feel free to adapt this form for use.
2. Performance appraisals must be done on an annual basis in order to ensure that the employee is fully informed of her or his progress in order to establish areas of increased emphasis and in order to protect the manager from charges that the employee is unaware of any deficiencies. In addition to the yearly performance appraisal preparation, the manager should have documentation throughout the appraisal period that brings to the employee's attention those concerns that must be addressed to keep performance at an acceptable level. Documentation is not limited, however, to negative feedback. Employees should receive documentation of their positive accomplishments, as a basis for narratives in an upcoming performance evaluation, and to motivate and reward the employee.

In an appeal, the Commission remarked that a manager had failed to note any of the positive contributions made by an employee by providing only negative feedback, thus not supporting a management contention that the counseling and documenting was to assist the employee to improve and succeed.

3. Counseling is the beginning of this process. However, the manager should always write a memo confirming conversations with employees in order for the information to be usable in any resultant written appraisal. Throughout the process of informing the employee of deficiencies, the manager's role is to assist in improving performance, not only by bringing it to her or his attention, but by providing on the job training, consistent and frequent assistance, and by supporting the employee's efforts through written communication. A corrective action plan should accompany feedback to the employee. This plan is to lay out some specific steps both the employee and you will take to support improved performance. A sample corrective action plan and counseling memo is attached.

4. When the supervisor has documented a pattern of clearly deficient performance that has failed to be corrected through the counseling process, a Special Review should be done, even though the employee's annual appraisal is not due. In the Special Review, two things are accomplished:
 - (a) Receiving written confirmation of their deficient performance places the employee on notice that an action may result if necessary improvement is not made. Although the Special Review process continues to offer the employee an opportunity to improve, it is important to inform the employee of the potential for demotion or dismissal if improvement is not made. This is not done to threaten the employee but to make the employee fully aware of the result of failure on their part to improve. This appraisal should be given to the employee in draft, signed by the supervisor only (not by the reviewer), and the employee should be informed that the evaluation will not become finalized until 10 days after. A final copy should be provided to the employee on the eleventh day.

 - (b) Specific objectives for the next 30-60 day review period are set that should be more focused than the general objectives and standards. The employee should be able to meet them in this review period or be given a description of what part of a project should be accomplished in that period.

5. Any response given by an employee to the Special Review should be addressed by the manager. It is important to consider the employee's comments; otherwise, it can appear that you have "made up your mind" and are not open to the employee's feedback and concerns. Your consideration can be to incorporate some of the employee's comments into the final evaluation, or to state that his/her comments were considered but did not change the factual information already contained on the appraisal.

6. Follow up on the process as carefully as possible, giving subsequent evaluations every 30-60 days. As discussed in Bulletin #5, this special review process must be continued until the employee either receives a standard rating or is demoted or dismissed.

7. **The evaluations given during the special review cycles do not require that you give the employee 10 working days to respond to a draft.** Since you are working closely with the employee on a very specific set of objectives over a short period of time, your interaction with the employee will allow the employee and yourself to discuss any concerns/objections.

8. A manager's active review of subordinate supervisors will ensure that supervisors are communicating standards and monitoring performance on a regular basis. The same monitoring

and counseling done with individual employees by the supervisor is also a part of the manager/supervisor relationship. A sample review format is attached.

Always confer with your manager and your Employee & Labor Relations Analyst. It is vitally important to be consistent in your treatment of all employees. Interaction with management and Employee & Labor Relations will ensure your objectivity and the supportability of your final determination.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 7
Inter-Departmental Transfers
(Probationary Periods)

Section 12 of Civil Service Commission Rule XI provides that employees may transfer from one position to another in their same classification. This rule also states that employees who transfer to a position in the same classification but in another department may be required by the department head to start a new probationary period. For the purposes of the Civil Service Commission Rules, agencies such as Health System and Human Services are considered Departments. Thus, employees transferring to the same classification within an agency (e.g., from Public Health to Behavioral Health & Recovery Services) cannot be required to start a new probationary period.

You should note that Section 12 of Rule XI also requires that, if a new probationary period is required for a transfer, the employee must sign a statement indicating an understanding that a new probationary period is in effect prior to the effective date of the transfer.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 8
Employees' Right to Representation

Please ensure that this information is distributed to your supervisors.

The question: You tell your employee that you want to meet with him or her about something. Your employee tells you that she or he will not meet with you unless a union representative is present. Is the employee correct?

The answer: "Whenever an employee is required to meet with a supervisor and the employee reasonably anticipates that such a meeting will involve questioning leading to disciplinary action, he/she shall be entitled to have a Steward present if he/she so requests. It is not the intention of this provision to allow the presence of a Steward during the initial discussions of an employee's performance evaluation."

This language is contained in all MOUs with employee organizations in the County, but what does it mean? Let's break it down to get a clearer look at it:

1. **The employee is required to meet.** This is clear. When you indicate that you want the employee to come to your office at a certain time, you have required the employee to meet with you.
2. **The employee reasonably anticipates that such a meeting will involve questioning.** Not every meeting involves questioning. You may tell the employee you wish to meet to give him or her a document (i.e., a letter of counseling/warning/ reprimand) and that there will be no questioning. You may wish simply to counsel the employee or give him or her your observation about something. If you tell the employee up front that there will be no questioning, then the employee cannot reasonably anticipate that it will occur.
3. **Questioning leading to disciplinary action.** This section is interpreted in the most general sense, that is, the employee can reasonably expect discipline as the result of any meeting in which she or he will be questioned. This refers to the employee's Weingarten Rights.

Page 2

4. **He/she shall be entitled to have a Union Steward present. . .**

The manager should try to schedule the meeting with enough advance notice to give the employee an opportunity to obtain a Union Steward. In doing so, there are two things which must be considered. First, it is a manager's responsibility to conduct the investigation and get the employee's point of view as quickly as possible so that any appropriate action can be taken. Second, it is the employee's right to have a Union Steward present. The practical course of action here is to give the employee a few alternate dates and times (two or three), a few days in advance. This is a fair way to balance the needs of both management and employees. However, if the steward is not available even though you have given her or him several options for meeting times, you are not restricted from meeting with the employee. On several occasions, employees have been told not to meet with management unless a particular steward or representative is present. Since Unions have more than one representative serving their unit, it is not reasonable that a meeting be delayed due to one person's unavailability. Your reasonable attempts should be documented in the file for future reference.

5. **. . .if he/she so requests.**

It is the employee's responsibility to request representation, it is not the manager or supervisor's responsibility to inform the employee of this right. Again, based upon the employee's Weingarten Rights, he/she can request union representation for an investigatory interview.

SUMMARY

As in all Employee Relations issues, it is important to be fair and honest. If you want to meet with an employee about something, be clear with the employee about the nature of the meeting. If the matter you wish to discuss with the employee may lead to disciplinary action, depending on the employee's responses, make sure the employee is afforded the opportunity to have the Steward there. If, however, you have requested a meeting with an employee, and he or she refuses to meet with you, contact your Employee Relations Analyst, who will assist you in determining the employee's rights, and advise you of alternatives.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 9
Work-Out-Of-Class

The MOUs and Ordinance Code provide that employees who are assigned work of a different classification having a higher rate of pay will be paid at the higher classification.

The purpose of this bulletin is to provide guidance in making work-out-of-class assignments.

Employees are worked-out-of-class because there is a need to temporarily fill a vacant position due to attrition, leaves of absence, or vacation/sick leave on the part of the incumbent. The first priority is always getting the work done during that time. In addition to this first priority, however, other management and employee objectives can be met:

1. **Equity/Fairness.** Work-out-of-class assignments should be made to give all qualified employees an opportunity to gain experience at a higher level of responsibility and pay. Unless it would cause reasonable disruption to productivity, work out of class assignments will be offered to qualified, interested permanent employees prior to utilizing extra help.
2. **Cross Training.** Because an organization frequently experiences the need to stretch resources, maximum flexibility in assignments can be maintained by using work out of class opportunities as training opportunities.
3. **Employee Development.** During the evaluative/counseling process that takes place, employees often express an interest in expanding their experience or in "moving up" in their careers. Work-out-of-class assignments can be used to fulfill employee goals in this area.

Given these objectives, the following are a few ways that work-out-of-class assignments can be made:

1. **By reference to an already existing eligible list for the position:** This type of assignment ensures that the people who are being assigned work-out-of-class have successfully demonstrated the knowledge and skills required of the higher level, as determined by the examination process.

2. **By reference to employee development plans:** By maintaining a record of employee career goals, assignments can be made to develop employees for future promotional opportunities.

3. **On a rotating basis:** Employees may be given opportunities for work-out-of-class for periods of, for instance, 30-60 days, so that each employee has experience in performing the new duties. Unless it would cause unreasonable disruption to productivity, work out of class assignments of more than 20 work days will be offered on a rotational basis to qualified, interested permanent employees. For example, if you have a work out of class assignment which will last for 3 months (60 work days), at least 3 employees would be rotated through the assignment rather than having one employee work out of class for the entire 3 months.

What way is appropriate for your department or division is determined by such things as staffing, flexibility, organizational priorities and length of time the incumbent will be absent from the position. Your department may already have a published procedure for making work-out-of-class assignments. These procedures should be followed and periodically reviewed to determine their effectiveness. Remember, any change in procedures currently in place must be shared with the Union.

However work-out-of-class assignments are made in your organization, it is necessary to ensure that the employee is evaluated for the time on assignment, not only because the employee benefits from the feedback, but also to ensure that management's primary goals are being met in the work-out-of-class assignment.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 10
Non-Punitive Discipline Program

Represented and unrepresented employees including all managers, confidential employees, attorneys, and employees in the Unrepresented Superior Court Unit are covered in the Non-Punitive Discipline Program.

Key Concepts of Non-Punitive Discipline

- The Non-Punitive Discipline Program replaces unpaid suspensions with a disciplinary letter equating to a suspension of a specified length. Non-Punitive Discipline is only used in cases where, without non-punitive discipline, the offense would warrant an unpaid suspension. **Non-Punitive Discipline is not a lower level of discipline than a suspension and does not include the option to suspend rather than issuing a non-punitive disciplinary letter.** This provision was put into place to avoid disparate treatment (i.e. suspending one employee and issuing another employee who committed the same offense a non-punitive disciplinary letter). The Sheriff's Office reserves the right to issue actual suspensions, rather than non-punitive disciplinary actions, as circumstances warrant.
- The non-punitive disciplinary letter carries the same weight as a corresponding suspension. An arbitrator hearing a grievance on a subsequent offense for an employee who had previously been issued a disciplinary letter equating to a 3 day suspension must consider the employee to have been suspended for 3 days. Since non-punitive discipline carries the same weight and equates to an unpaid suspension, the burden of proof to show cause is also the same. In other words, the manager/department must be prepared to produce the same level of proof before the Civil Service Commission or an arbitrator as if the employee had been suspended.

Attached, for your information and retention is a copy of the Non-Punitive Discipline Program Description. If you or your managers have any questions about the program or would like to meet to discuss its provisions, please contact your Employee Relations Analyst.

NON-PUNITIVE DISCIPLINE PROGRAM DESCRIPTION**Overview of Current Discipline Program**

The County practices the concept of progressive discipline. When an employee's conduct warrants corrective action, the supervisor/manager takes the lowest level of disciplinary action which 1) is appropriate to the severity of the employee's offense and 2) is likely to result in the employee's not repeating the misconduct.

Minor misconduct (e.g. initial instances of tardiness or absenteeism) is normally dealt with through counseling confirmed in writing. Should the misconduct be repeated, the normal progression is a letter of reprimand followed by a suspension. Further misconduct may result in a second suspension, demotion, or dismissal. Misconduct of a more serious nature may result in suspension, demotion, or dismissal on the first offense.

Objectives of the Non-Punitive Discipline Program

The overall goal of the Non-Punitive Discipline Program is to improve public service and productivity in the workplace by:

- Correcting conduct problems promptly, rationally and constructively
- Alleviating the financial impact of discipline on employees' families
- Affording employees the ability to be rehabilitated and to clear their records
- Taking corrective action which is just, equitable and sustainable

Non-Punitive Discipline Program Overview

1. The Non-Punitive Discipline Program replaces unpaid suspensions with a disciplinary letter which fully equates to a suspension of a specified length (e.g. one day, three days, etc) and the Union agrees and acknowledges that the disciplinary letter carries the full weight of such a suspension for the purposes of establishing progressive discipline. This process eliminates the financial impact of a suspension on the employee and the employee's family while still establishing a record of progressive discipline should the offense recur. This process also eliminates the need for the department to replace the employee during the suspension, thereby conserving County funds.
2. In cases where an employee recognizes and acknowledges that his/her conduct was inappropriate, the non-punitive discipline system allows disciplinary letters to be removed from the employee's file and for the employee's employment record to be cleared. This process involves a rehabilitation plan which specifies actions/training to be completed by the employee and a period during which further misconduct must not occur, after which the employee's record is expunged. This allows the employee to put the misconduct behind him/her, become a fully productive member of the workforce and fully realize his/her potential. Note: The Sheriff's Department reserves the right to retain disciplinary letters in the personnel files of law enforcement employees.
3. Employees retain the right to appeal non-punitive discipline through the grievance process or to the Civil Service Commission.

How the Non-Punitive Discipline Program Works

The Non-Punitive Discipline Program is designed to help correct conduct and attendance problems by serving as a step in progressive discipline. Normally, the Non-Punitive Discipline Program will not be used to correct performance problems (quantity/quality of work). Performance problems are dealt with through counseling, corrective action plans with performance-specific objectives and outcomes, and performance evaluations.

Investigation - When an incident of misconduct or an attendance problem has been investigated and reasonable proof has been found, the department makes a determination regarding the appropriate level of discipline. If it is determined that the infraction does not warrant demotion or dismissal, but does warrant more than counseling or a letter of reprimand, the non-punitive discipline program will be used.

Intent Letter - A Skelly letter of intent is issued to the employee stating that it is the intent of the department to issue a disciplinary letter equating to a suspension of X days. This letter takes the same form as the usual Skelly letter but, instead of proposing a suspension, proposes a disciplinary letter equating to a suspension.

Oral/Written Response - The normal Skelly process is followed, with the employee having the opportunity to make an oral and/or written response to the charges in the intent letter.

- a. If the employee presents information which causes the department head to determine that the disciplinary letter is not warranted, the case will be closed with a letter of reprimand, a warning letter, or a letter clearing the employee of the charges, as appropriate.
- b. If the department head determines that the disciplinary letter is warranted, he/she will issue a decision letter, imposing the disciplinary letter in lieu of a suspension. The decision letter itself constitutes the disciplinary letter and a separate disciplinary letter is not issued. As in other disciplinary actions, the department head may decide to modify the proposed discipline (e.g. a letter equivalent to a 1-day suspension rather than one equivalent to a 3-day suspension) based on the employee's response.

The management official hearing the oral response determines, based on the employee's response and by asking questions, whether the employee acknowledges that the misconduct for which he/she is being disciplined was improper, and whether it is the employee's intent not to repeat the misconduct.

1. If the employee acknowledges that his/her misconduct was improper, and indicates the intent not to repeat the misconduct, a rehabilitation plan is developed. This plan will list actions the employee will take and/or training the employee will attend to ensure that the misconduct does not recur. The plan will also set a timeframe during which misconduct must not recur. Once the actions laid out in the rehabilitation plan are completed and the agreed upon timeframe has elapsed without further misconduct, the disciplinary letter will be removed from the employee's personnel files. At this point, the matter will be closed and the employee will be considered fully rehabilitated.
2. If the employee does not acknowledge that his/her misconduct was improper, and/or does not indicate the intent not to repeat the misconduct, no rehabilitation plan will be developed, and the letter will remain in the employee's personnel files.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 11
Investigating Employee Complaints

Consider the following scenarios:

1. An employee tells you that she was sexually harassed by a co-worker.
2. An employee alleges that a co-worker is making long distance phone calls on County time and charging them to the County and is using the photocopier and fax machine for personal business.
3. An employee writes you a note reporting a health/safety hazard and asking that you provide expensive safety equipment to all employees in the Division.

How you respond to complaints like these could make the difference between a prompt and effective resolution or expensive litigation. In cases involving allegations of sexual harassment or workplace safety violations, you have a legal duty to investigate. Proper and prompt investigations can be the single most important factor in preventing lawsuits, or helping you successfully defend yourself if a suit is filed. At a minimum, effective investigations demonstrate that you acted fairly and in good faith. Failing to act, or improperly investigating can greatly increase your legal risks. The key to a successful investigation is to approach each complaint in an organized and consistent manner.

The goal of the investigation is to gather information so you can decide how to respond appropriately to an employee's complaint. Complaints of sexual harassment should be reported immediately to your Department Head and to the County's Equal Employment Opportunity Manager. Alleged safety violations should be reported to your Department Head and to the County's Safety Manager (x4613). For most other complaints, you should be able to use the following steps as an outline for conducting the investigation.

1. Receive the Complaint

- Explain procedures. Tell the complainant that the matter will be promptly investigated and explain your procedures for investigation. Mention that someone else may interview the employee later to obtain additional information. Advise him/her that there will be no retaliation for coming forward with a complaint made in good faith and tell him/her to report any perceived retaliation immediately.
- Discuss confidentiality. It is important not to promise confidentiality. But explain that the investigation

will be handled as discreetly as possible, and information will be disclosed only on a “need to know” basis.

- Written complaint. Have the employee write out the complaint. You may want to use a form such as the sample attached. The complaint should be written out before you begin the investigation because the employee’s description of the problem will determine how you proceed with the investigation.
- Employee’s own words. It is best to have the employee explain the problem in his/her own words. You want the employee’s best recollection of the facts, not what other people remember. For this reason, ask the employee to fill out the complaint form at work (in a private office if possible), rather than taking it home.
- Review written complaint. After the form is completed or the employee has written out the complaint, go over it with the employee. Make sure you understand the problem. Verify orally that the information on the form is complete and accurate. Also make sure the employee has signed and dated the complaint.

2. Overall Considerations

- Keep the investigation low key. Throughout the investigation, be sure to act in as discreet and professional a manner as possible. Don’t talk about the complaint or investigation to anyone who does not have a direct interest in the matter.
- Maintain a separate investigation file. Be sure to preserve any documents that you collect, including notes, memos, and witness statements. Remember to protect e-mail messages and computer disks. All of the records should be kept in an investigation file, separate from the personnel files of those involved. Remember that anything you put in writing, unless it is correspondence between you and an attorney, can be subpoenaed. Be sure that your notes are factual and not just speculation or opinion.
- Don’t be overly aggressive. Don’t record conversations or interviews with the complainant, witnesses, or the alleged perpetrator without first consulting with County Counsel. Do not search employee lockers, desks, purses, etc., without consulting County Counsel.

3. Select an Investigator

- Choose an uninvolved party. Select a non-involved manager to investigate the complaint. (For allegations of sexual harassment or alleged safety violations, consult your Department Head and the County’s EEO Manager (x4340), respectively, prior to selecting an investigator.) The person selected should be objective and should not be implicated in the complaint, and should have credibility, sensitivity, good interviewing skills, and a good knowledge of department policies and procedures.
- Consider two-member teams. Sometimes it is a good idea to have a two-person interviewing team, as long as it doesn’t seem too intimidating. If you choose this option, make sure both individuals have enough time to devote to the investigation so it can be conducted in a timely manner.

4. Interview Witnesses

Act quickly. Start the investigation as soon as possible after the complaint is made. Memories will be fresher and you may be able to prevent the problem from escalating

- Disclosing details. The investigator should interview the employees and witnesses identified on the complaint form, including the complaining employee and, depending on the complaint, the alleged offender. In interviewing witnesses, it is usually best to advise them of the general nature of the complaint, but not to provide details of the complaint. This will allow them to have a clear memory of the alleged events without being influenced by what the complainant alleged.
- Explain procedures. At the beginning of each interview, explain that: 1) you need the witness' assistance in investigating a workplace complaint; 2) you have an obligation to investigate and gather information; 3) you want the witness to provide accurate and truthful responses; 4) no conclusions have been reached and you are simply trying to ascertain the facts; and 5) you will not permit any retaliation against them and they should immediately report any perceived retaliation.
- Remind accused employee of procedures. Prior to interviewing the employee against whom the complaint was filed, advise him/her of the general nature of the allegations (without giving specifics), that the allegations are serious, and that disciplinary action could result if the investigation shows that the alleged behavior or misconduct occurred. If the employee is represented and he/she requests the presence of a Union representative, allow him/her reasonable time to arrange
- Dealing with uncooperative employees. If someone won't cooperate, point out that you will base your decisions on the information you have on hand and you won't have the benefit of their version of the story. Keep in mind that some employees may be entitled to have a Union representative present during the interview. Also, if for any reason an employee wants to leave the room, never prevent the person from doing so.
- Allow nothing "off the record". If an employee wants to talk with you about the problem in confidence, it's important to point out that because you have a duty to investigate complaints, the discussion can't be "off the record." But make clear that you'll try to be as discreet as possible.
- Take notes. During the interviews, take detailed notes of the questions asked and the person's responses. Since these notes may have to be disclosed in the event of a lawsuit or grievance, be sure to keep them factual and free of personal opinions. The notes should also indicate the name of the person interviewed, the date, time, and location of the interview, who was present, the length of the interview, and the identity of the interviewer.
- Ask factual questions. Remember to stick to basic objective questions designed to obtain the most complete information about the complaint - in other words, who, what, when, where, why and how.
- Try to reduce rumors. Ask interviewees not to discuss the interview or investigation with anyone else while the investigation is going on, so as not to influence the result and to prevent rumors.
- Seek complainant's opinion. When interviewing the complainant, ask how he/she would like to see the matter resolved. Although the complainant's preference isn't binding on you, it may be helpful to have the desired resolution on the record.
- Identify additional witnesses. Decide whether there are any other witnesses, and, if appropriate,

interview those employees.

5. Reach a Conclusion

- Analyze information. Review all documents that might be relevant to the complaint, such as performance evaluations, disciplinary memos, and attendance records. Also, find out whether similar complaints have been made in the past against the alleged offender and the results. The latter information should be kept confidential and not disclosed to the complaining party or witnesses.
- Consider credibility. Evaluate the credibility of the witnesses. Among other factors, consider their reputation for honesty and their opportunity to observe what happened. Determine if they have a motive to lie or shade their story in favor of or against a particular individual or whether they have anything to gain from the results of the investigation. Note if any of their prior statements are inconsistent with their present recollection of events or if their statements differ factually from other witnesses. Observe their demeanor and attitude including physical signals such as squirming in a chair while answering questions or refusing to make eye contact.
- Witness verification. Determine whether the complaining employee's account is consistent and verified by other witnesses. Answer the same questions about the alleged offender's version of events. Also, consider whether either party appeared to be withholding information or otherwise failed to cooperate.

Come to a conclusion. Reach a decision about whether the information you have gathered supports one of the following conclusions: 1) the complaint is valid; 2) the complaint is unjustified; or 3) the evidence is inconclusive. Document the reasons for your conclusion in writing. Once again, keep in mind that your written remarks may have to be revealed if a lawsuit or grievance is filed.

6. Determine Appropriate Action

When the complaint is valid, take action. If you conclude that the complaint is valid, decide what action is appropriate. This may involve corrective or disciplinary action against the subject of the investigation. Prior to initiating corrective or disciplinary action, consult Employee Relations. If the complaint involved a workplace safety violation or similar problem, consult The County's Safety Manager at x 4613 to determine appropriate measures to take to remedy the problem.

- Choose appropriate disciplinary action. If discipline is warranted, keep in mind that it should be proportionate to the offense committed, and designed to prevent or discourage future problems. Your decision to discipline or not discipline should be documented in the investigatory file.
- Proceed cautiously when the complaint is not substantiated. If you decide the complaint is not supported by the evidence, don't take disciplinary action against the complaining party unless you have very clear proof that the person lied or made the complaint in bad faith. Otherwise, you risk being accused of retaliation. If you conclude the complaining party lied or made the complaint in bad faith, call Employee Relations.
- Explore options when there is an inconclusive outcome. If you are unable to determine whether the complaint is justified - which is frequently the case - you may still want to take steps to make sure that you have done everything in your power to solve the problem or prevent the alleged behavior from

recurring. For example, consider discussing the general topic at a staff meeting, or distributing a memo reminding employees of your position on the issue or policy that was the subject of the investigation. But, don't disclose the specifics of the complaint.

7. Follow Up

- **Notify affected parties.** Inform the complaining party and the accused of the outcome of the investigation. If the offending employee was disciplined, let the employee who filed the complaint know that corrective action was taken, but do not disclose the nature of the corrective action. Ask the complaining party to advise you if there are any further problems. Tell other employees of the outcome only to the extent they need to know.
- **Report illegal activity.** In some cases, where an investigation demonstrates that a law may have been violated, you have an obligation to report the violation to a government agency. Consult County Counsel in any case in which this may be an issue.

Attachment - Sample Complaint Form (To be given to any employee who wishes to lodge a complaint before the investigation begins.)

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 12
Use of Vacation or Other Accrued Leave in Lieu of Sick Leave

We are often asked whether or not an employee can use vacation hours in lieu of sick leave/sick leave without pay. Generally, managers want to allow the use of vacation except in cases where employees have an attendance problem. There is no written policy allowing or prohibiting the use of vacation for sick leave purposes. Our recommendations are as follows:

Generally, we recommend approving employees' requests to use vacation hours in lieu of paid sick leave. If the employee making the request is being documented regarding attendance, use of vacation should only be approved for pre-scheduled medical appointments and those absences should be documented to clearly record that the vacation was used in lieu of sick leave.

An employee who has exhausted his/her accrued sick leave balance may use other accrued leaves (vacation, comp time, holiday credits) in lieu of sick leave which meets the criteria specified in the Sick Leave section of the MOU, unless the employee has been documented for attendance problems within the last 4 months, in which case such other leaves may only be used for pre-scheduled and pre-approved medical and dental appointments. The use of such leave in lieu of sick leave is subject to all other provisions of the Sick Leave section of the MOU.

This allows employees who have not been documented for excessive sick leave usage to use other accrued leaves to cover illnesses. For example, an employee who has just returned from parental leave or from an extended illness/injury may have used all of his/her sick leave. Should that employee become ill, he/she would be able to use vacation, comp time or holiday credits to cover the absence rather than using sick leave without pay.

This means that it is more important than ever for your managers and supervisors to document excessive sick leave usage in writing at an early stage.

Generally, we recommend against allowing employees who have exhausted their accrued sick leave to use vacation hours in lieu of sick leave without pay, unless the employee has exhausted their sick leave as a result of a major illness/injury which requires continued medical care. If departments elect to allow employees to use vacation hours in lieu of sick leave without pay, those absences should be documented

to clearly record that the vacation was used in lieu of sick leave without pay. This documentation is necessary to support any corrective/disciplinary action for excessive absenteeism since, without the documentation, the absence would appear to be an approved vacation day.

We recommend that each department consider employee requests to use vacation time in lieu of sick leave and sick leave without pay on a case by case basis. To avoid discrimination complaints and claims of disparate treatment, it is important that each department consider such requests in a consistent manner based on objective criteria. Some examples of criteria to be considered are:

- The employee's history of sick leave usage - Has the employee exhausted their sick leave as a result of a major illness or maternity leave, or has it been exhausted mainly due to a series of one to three day absences?
- Recent documentation regarding attendance - Is the employee currently on a leave restriction letter or is there documented counseling regarding use of sick leave within the past six months?
- Pattern of leave usage - Has the employee established a pattern of sick leave absences (Mondays/Fridays, after holidays, in conjunction with vacation, etc)?
- The purpose of time off - Is the leave for a pre-scheduled medical appointment or to cover a "last minute" call in?

Note: If your department already has a policy or practice in place, any changes in that policy or practice will require advance notification to affected Unions and meetings with them prior to implementation of the change. If you decide to change an existing policy or practice, please consult Employee Relations prior to initiating the change.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: March 22, 2022

TO: All Management and Supervisory Employees

FROM: Michelle Kuka, Deputy Director of Human Resources

SUBJECT: Employee Relations Bulletin 13
Rest Breaks

It is clear that providing rest breaks is beneficial to both workers and the County. Full-time workers are allowed one fifteen minute rest break prior to and after their mid-shift meal break. Part-time workers are allowed one fifteen minute rest break during any four hour work shift. For most workers, this equates to a lunch break and two rest breaks — one in the morning and one in the afternoon. The fifteen minute rest breaks are paid, the mid-shift meal break is not.

Unusual circumstances may occasionally occur that do not allow workers to be released for rest breaks. Rest breaks cannot be accumulated or “banked” for the purpose of taking longer breaks or leaving work early. If rest breaks are not taken, they are lost. Meal breaks must be no less than 1/2 hour, and cannot be skipped to reduce the work day.

We are also often asked how long an employee may work without being required to take a meal break. Employees are required to take a meal break of no less than 30 minutes if they work more than five hours.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: December 2017

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 14
AB 1008 “Ban the Box” Expansion – Changes in Hiring Procedures Regarding
Criminal History Consideration

AB1008, expanding the statewide “Ban-the-Box” Laws included in the California Fair Employment and Housing Act (FEHA), will significantly change our current recruiting process. Specifically, effective January 1, 2018 we may no longer request conviction information prior to making a conditional job offer.

What does this mean for you, the hiring department?

Approximately December 1, 2017 Human Resources Personnel Services staff will no longer request conviction information of qualified candidates prior to creating the eligible lists. Upon completion of the Civil Service interview process, Departments will receive eligibility lists sooner as the current step of verification of conviction information will be removed from the process.

Departments will continue to hold departmental interviews and should conduct thorough reference checks on their top candidates. Department will make a conditional offer and send the candidate for fingerprinting as appropriate. Once the County receives clearance of no criminal activity the candidate and department complete the hiring process.

If the County receives notice of criminal history, that information will be reviewed by Employee Relations, similar to the current process. Employee Relations will consider (as required in the new legislation);

- the nature and gravity of the offense or conduct
- the time that has passed since the offense and completion of the sentence
- the nature of the position

If Employee Relations determines that the applicant’s criminal history disqualifies the applicant, that preliminary decision must now be issued to the applicant in writing. The notice must include:

- 1) a copy of the applicant’s conviction history report,
- 2) specifically which conviction(s) are the basis for the preliminary decision,
- 3) an explanation of the applicant’s right to respond to the preliminary decision informing them of the right to submit evidence challenging the accuracy of the conviction history report, evidence

- of rehabilitation or mitigating circumstances or both
- 4) and must provide for at least five business days for the applicant to respond

If, during the five business days, the applicant responds that they dispute the finding and are taking steps to obtain evidence to support their assertion, the applicant shall have five additional business days to respond to the notice.

Employee Relations will then consider any information submitted by the applicant prior to making a final decision. If Employee Relations makes a final decision to deny an applicant solely or in part because of the applicant's conviction history, Employee Relations will notify the applicant of the final denial and provide information required by law such as informing the applicant of their right to file a complaint with the Department of Fair Employment and Housing.

If the candidate is disqualified by Employee Relations the department would then move on to their next candidate, making them a conditional offer and restarting this process.

The above does not apply to any position for which a state or local agency is otherwise required by law to conduct a conviction history background check. This also does not apply to a criminal justice agency as defined in Section 13101 of the Penal Code. Such agencies include the Sheriff's Office, the Probation Department and the District Attorney's office.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 15
Denial of Merit Increases

When an employee at salary step A, B, C, or D receives an annual performance evaluation rated below standard, his/her merit increase (step increase) should be denied. Whenever a merit increase is denied because of below standard performance, a Performance Evaluation report is required.

Following the issuance of a below standard evaluation, the employee should be placed on a Corrective Action Plan. This consists of the Supervisor working closely with the employee to provide guidance and resources that will assist the employee in bringing their performance up to a competent level. In addition to working closely with the employee, the Supervisor should issue a special evaluation approximately every thirty days for a 90-day period. Depending on the employee's job functions, it may be more suitable to issue them special evaluations every 45 or 60 days. The corrective action plan will continue for three special evaluation periods in an effort to assist the employee in reaching a standard level, and make sure the employee is sustaining that level. However if the employee is not demonstrating significant and sustained improvement, it may result in the employee being demoted or dismissed. If the employee's performance does reach a standard level, this should be noted on the Performance Evaluation report, and a merit increase should be granted effective the following pay period.

If you are planning to issue your employee a below standard evaluation, please contact your Employee Relations Analyst for guidance on this process.

Please contact your Employee Relations Analyst with any questions regarding this matter.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 16
Assignment to Work at a Different Location
(Formerly Called Administrative Leave)

During negotiations and while working with managers on Employee Relations cases, we have had many questions regarding removing employees from the workplace during an investigation of alleged misconduct or during the timeframe between an intent to dismiss letter and a decision on the proposed discipline. This Bulletin provides guidance on determining when it is appropriate to take this step, outlines the procedures to be followed in directing employees to work at a different location, and provides a sample letter.

A department head should only remove employees from the workplace in those rare situations discussed below and only after first discussing the matter with Employee Relations and County Counsel.

What is “Assignment to Work at a Different Location”?

Assignment to work at a different location (formerly called administrative leave) is a temporary status during which management directs an employee to leave the worksite. The County continues to pay the employee’s normal salary and benefits during the duration of the assignment. In most cases, the employee is directed to remain at home during his/her normal working hours and to be available to be reached by telephone during those hours, but may instead be assigned to a different work location.

Determining whether to assign an employee to work at a different location

The most common situations when an employee is assigned to a different location are:

1. While an investigation into alleged misconduct is being conducted.
2. During the interval between the issuance of a Skelly “Intent to Dismiss” letter and the final decision to dismiss or not dismiss the employee.

Of course, it is not appropriate to assign an employee to a different location whenever an investigation into alleged misconduct is being conducted, or every time an Intent to Dismiss letter is issued. Placing

employees on this type of assignment should be the exception rather than the rule. It may be appropriate to assign an employee to work at a different location when one or more of the following criteria are met:

1. Potential liability - Is there potential liability for the County if the employee is allowed to remain in the workplace? For example, if the allegation involves inappropriate conduct toward a vulnerable client, threats or acts of violence, sexual assault, or other criminal activity, there is potential liability if the employee is allowed to remain in the workplace while the investigation is being conducted.
2. Potential for sabotage or theft - Has the employee made statements or exhibited behaviors which cause concern that he/she may destroy or steal records, data, equipment, supplies, etc?
3. Integrity of evidence - Does the employee have access to evidence which, if destroyed or stolen would jeopardize the investigation or disciplinary action?
4. Potential for violence - Has the employee made statements or exhibited behavior which causes concern that he/she may engage in aggressive or violent acts or is making overt or veiled threats of violence or retaliation toward the organization, supervisors/managers, co-workers, or the public?
5. Impact on the morale of co-workers or disruptions to the workplace - Has the employee made statements or exhibited behavior which disrupts operations, impacts the public, or adversely impacts co-workers' ability to perform their jobs? Examples are angry outbursts, extended or loud discussions of the investigation or disciplinary matter, and disparaging statements to the public about the organization, supervisors/managers, or co-workers.

In determining whether to assign an employee to work at a different location is appropriate, you should consider, in addition to the above criteria, the following factors:

1. The employee's length of service and work history - Is there any history of dishonesty, theft, violent or aggressive behavior, or a tendency to be disruptive?
2. The employee's behavior and conduct when confronted and interviewed about the conduct leading to the investigation/intent letter - was the employee cooperative, composed and calm during the interview, or did he/she become angry, loud and defensive?

Prior to making the final determination to temporarily assign an employee to work at a different location, consult with Employee & Labor Relations and County Counsel.

Length of the assignment to work at a different location

The duration of assignment to work at a different location should be as short as possible. If the assignment is due to an investigation, the investigation should be possible within the context of a thorough investigation. If the investigation results in the issuance of an intent to dismiss letter, the assignment to a different location should be continued until a decision is made by the department head and the decision

letter to dismiss (or impose lesser discipline) is issued. The time between the issuance of an intent letter and the decision of the department head should normally not exceed two weeks unless the employee requests and the department head extends the timeframe for the employee to make his/her reply to the intent letter.

Procedures for temporarily assigning employees to work at a different location

If the decision is made to assign an employee to work at a different location, you should advise the employee of that decision by issuing a letter following the attached format. After issuing the letter, you should observe the employee until he/she leaves the worksite. It is important that your observation of the employee's departure be as discreet as possible since recent court decisions have granted monetary relief to employees who asserted that they were publicly humiliated by being escorted from their workplace in full view of co-workers.

Please contact your Employee Relations Analyst with any questions regarding this matter.

SAMPLE ASSIGNMENT TO WORK FROM HOME

Date

Name

Classification

Department

Dear Mr. Employee:

Subject: Temporary Assignment to Work at a Different Location

Effective immediately, you are temporarily assigned to work at home pending an investigation into alleged misconduct on your part. You are directed to remain at your home between the work hours of 8:00 a.m. to 5:00 p.m., Monday through Friday with a one hour meal break from noon to 1:00 p.m. during which you are at liberty to leave your residence. You are directed to be available to be reached by telephone during the hours of 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m. If you are unable to be reached by telephone during those hours while on this assignment, the time that you are unavailable will be considered Absence without Leave (AWOL) and disciplinary action will be taken.

You will remain in this status until the investigation is completed at which time you will be contacted with further directions. While you are on this assignment, you will continue to receive your normal pay and benefits.

Should you wish to conduct personal business away from your home or attend a medical appointment during the period you are assigned to work at home, please call me to let me know the day and hours to code to vacation or sick leave.

You are further directed not to appear at or call the department and you are not to access the computer system while on this temporary assignment. Should you need to retrieve any personal belongings from the office, you are to call either me at (phone #) to arrange for any personal items to be sent to you.

Sincerely,

Manager

Title

COUNTY OF SAN MATEO**HUMAN RESOURCES DEPARTMENT****Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 17
Vacation Time for Probationary Employees

Recently, we have received questions regarding the use of vacation time when an employee is hired into a permanent position after working extra help. The main question has been “If an employee has worked extra help and starts in their permanent position with accrued vacation time, can he/she take vacation while they are on probation?” We have researched this question and we wanted to provide you with some recommendations.

The County Ordinance Code states that “No vacation will be permitted prior to the completion of 13 full pay periods of continuous service in any status.” The American Federation of State, County and Municipal Employees (AFSCME) MOU states “No vacation will be permitted prior to the completion of thirteen (13) biweekly pay periods of service. Such service includes time in an extra-help status provided that there has not been a break in service...” Most of the other union contracts have language similar to the Ordinance Code.

We recommend vacation requests in most cases be denied for new County employees who have not previously worked in any status (permanent, probationary or extra help). This action ensures that a new employee’s performance can be observed by the supervisor during the full probationary period. Of course, if there is a special situation and vacation is approved during probation, the department may always opt to extend the probation by the length of the vacation to provide a full probationary period. Because the first several months are a critical time for reviewing the performance and conduct of the new employee, vacation time is typically not approved unless there was an exceptional event such as a family emergency.

However, if an employee has worked in an extra help status before accepting a permanent position, the supervisor has already reviewed the performance and conduct of the new employee. In this situation, based on the “continuous service” language and the intent of the language a department may approve the vacation even if the employee is on probation. In circumstances where an employee who has worked in an extra help status, is selected for a permanent position which is different from the extra help classification a department may decide not to approve a vacation. In any circumstance the employee should go through the normal process to request vacation time and then the department would determine whether to approve it based on workload, coverage, etc.

If you have any questions, please call your Employee Relations Analyst.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 18
Alternate Work Schedules

More and more departments, divisions and units are implementing alternate work schedules (e.g. 4/10 and 9/80 schedules). The following guidelines should be followed prior to implementing such schedules:

1. Maintenance or enhancement of service levels to the public should always take first priority in determining work schedules. 9/80 and 4/10 schedules often allow an extension of office hours, thus affording a higher level of service to the public. Alternate work schedules should never be entered into if they will negatively impact service levels.
2. Prior to discussing alternate work schedules with employees or the union, a sample schedule should be developed to determine whether an alternate work schedule is practical. You may find, for example, that a 4/10 schedule leaves too few employees for a given day coverage or that it may not be possible, under a 9/80 or 4/10 schedule, for all employees to have Monday or Friday as an off day.
3. As a general rule, employees should be supervised during all work hours.
4. 9/80 schedules require specific documentation of each employees hours of work to preclude payment of overtime. A form documenting the schedule, available from Employee Relations, must be completed for and signed by each employee on the 9/80 schedule.
5. Alternate work schedules are a change in working conditions which require notification to the affected union(s) and a meet and confer process. If an agreement is reached on an alternate work schedule, it should be documented in a signed agreement. Employee Relations is available for consultation during this process and can provide sample agreements reached in other organizations.

Any agreement should include criteria which will be evaluated to determine whether the alternate schedule will be continued. These criteria should include, at a minimum, coverage levels, measurement of service levels and customer complaints related to the schedule, and attendance levels.

The agreement should include language stating that employees on alternate schedules may be returned to standard hours if they experience attendance or performance problems, or in case of staffing problems.

It should also document that employees on jury duty, attending training, working out of classification etc., may be required to return to a standard schedule during that period.

If you do end up implementing Alternative Work Schedules, it is very important to be mindful of when an employee requests to have an informal flex schedule arrangement. The flex schedules under question involve situations where an employee works more than their scheduled hours on one day and, instead of being paid overtime, agrees to work fewer hours on another day. For example, an employee who normally works five 8-hour days may work 10 hours on Tuesday and 6 hours on Friday. This section provides guidance on such schedules relative to overtime requirements under the Fair Labor Standards Act (FLSA) and for represented employees covered by a Memorandum of Understanding (MOU).

Section I (below) applies only to employees who are covered by the FLSA. These are employees in Work Group 1. Section II applies to employees in Work Groups 2 and 5 who are exempt from the FLSA, but who are covered by a Memorandum of Understanding. **Prior to entering into discussions with an employee about an informal flex schedule, please call Employee Relations to confirm the employee's Work Group.**

Section I – FLSA Covered Employees in Work Group 1. The informal flex schedule described above is acceptable and in accordance with the provisions of the FLSA as long as the following criteria are met:

1. The employee must code the actual number of hours worked each day on the timecard. In the example above, the employee would code 10 hours of 001 time on Tuesday and 6 hours of 001 time on Friday.
2. The employee must not work more than 40 hours in any week. In the case above, the employee worked 40 hours during the work week. It is not acceptable for a FLSA-covered employee to work extra hours in one week and take the time off in the following week. For example, an employee who is covered by the FLSA cannot work 10 hours on a day in the first week of a pay period and then work 6 hours on a day in the second week of the pay period without being paid overtime for the additional 2 hours worked in the first week. The FLSA requires overtime for all hours worked beyond 40 in any given week.

Section II – FLSA Exempt Employees in Work Groups 2 and 5: The FLSA provisions outlined above do not apply to employees in Work Groups 2, or 5. However, most employees in Work Groups 2 and 5 are covered by a Memorandum of Understanding that requires the payment of overtime for hours in excess of the 40 hour weekly work schedule. Prior to allowing a represented employee in Work Group 2 or 5 to flex their schedule beyond a single work week, make sure that the employee is voluntarily agreeing to the arrangement and then document the agreement in the form of a dated note. As for employees in Work Group 1, make sure that the timecard accurately reflects the actual number of hours worked on each work day.

Work schedules are covered in more detail in Section 16 of the Employee Relations Handbook.

Please contact your Employee Relations Analyst with any questions regarding this matter.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 19
Family School Partnership Act

This act allows an employee who is a parent, guardian or custodial grandparent with children in a licensed day care facility or in Kindergarten through 12th grade to take up to 40 hours a year to participate in day care or school activities. The employee may use vacation, compensatory or holiday time to take time off to attend these activities. The employee must provide reasonable notice to the employer and the employer is only required to provide up to 8 hours of time off in any given calendar month. Additionally, employers are allowed to request written proof from the school verifying that the employee participated in school activities on the specified date and time.

If you have any questions, please contact your Employee Relations Analyst

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 20
Potential Criminal Actions/Arrests/Convictions

This bulletin provides procedures to follow when you a) learn of an allegation of potential criminal action by an employee, or b) learn that an employee has been arrested. The third part of this bulletin contains the County's policy requiring any employee who is convicted of a felony or misdemeanor to report such conviction within twenty-four hours.

Note: The information contained in this bulletin is not meant to be applied to employees who are Peace Officers. For such employees, managers/supervisors should follow procedures established by their departments to ensure that the provisions of the Peace Officers Procedural Bill of Rights are followed

Potential Criminal Actions

The attached memorandum from County Manager John Maltbie outlines the procedures to be followed when a manager or supervisor becomes aware of an allegation of potential criminal action by an employee. It is essential that supervisors and managers contact the County Counsel's Office as soon as they become aware of an allegation that involves potential criminal action. If you are unsure whether the allegation involves potential criminal action, contact the County Counsel's Office for guidance.

Arrests

Occasionally, a manager or supervisor learns that one of his/her employees has been arrested. Sometimes this information comes directly from the arresting agency, sometimes it is reported by a co-worker or member of the public, and sometimes the employee reports the arrest. What, if anything, should the manager/supervisor do?

When you learn about an arrest, you should immediately contact County Counsel and Employee Relations for assistance in planning whether and how to conduct an investigation. If there is an arrest, you can, and should, investigate the underlying conduct that led to the arrest to determine whether disciplinary action based on the underlying conduct is warranted. This must be distinguished from using the fact of the arrest itself or the police record of the arrest, to take an employment action, which, generally is not permissible. California Labor Code section 432.7(a) provides that, an employer may not use "any record of arrest or

detention that did not result in conviction” as a factor in determining any condition of employment, including the decision to hire or terminate. Thus, an investigation of the facts themselves (as opposed to the arrest itself) is necessary to determine if any action is warranted. Contact County Counsel and Employee Relations for guidance.

County Counsel and Employee Relations will provide guidance on how to inquire into the underlying facts without relying on the arrest report, the arresting officer, or any of the police documents. This inquiry will focus on the nature of the conduct to determine whether it has any connection to the employee’s job duties. County Counsel and Employee Relations will provide guidance throughout this process.

Convictions

The County’s policy on Reporting Convictions is as follows:

1. Any County employee who is convicted of a felony or a misdemeanor, or placed on parole or probation subsequent to employment must report such conviction, parole or probation to Employee Relations within 72 hours of the conviction, or of being placed on parole or probation. A conviction will not necessarily result in disciplinary action. Each conviction will be reviewed/investigated to determine if disciplinary action is warranted. Failure to report a conviction within 72 hours of the conviction will result in disciplinary action, up to and including dismissal, absent an explanation of the failure to report which is satisfactory to the appointing authority.
2. The District Attorney’s Office will notify Employee Relations of any San Mateo County convictions of County employees.

If an employee advises you of a conviction, or you become aware of a conviction, contact Employee Relations and County Counsel immediately.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Managers and Supervisors

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 21
Medical Statements

Note: The information in this bulletin does not apply to sick leave used in conjunction with Workers Compensation cases, nor does it apply to medical statements required in conjunction with Medical or Family & Medical Leaves of Absence.

In recent negotiations, there was considerable discussion regarding the requirement for a medical statement to support an employee's use of sick leave. One of the most discussed issues was some supervisor's and manager's refusal or objection to accepting statements (usually from Kaiser) that state that the employee "states that they are ill" and that do not certify that the employee was seen by a physician or health care practitioner. This bulletin will provide guidance on when it is appropriate to require the submission of medical statements and also clarifies that, under most circumstances, statements from Kaiser and other providers that simply state that the employee states that he/she is ill and unable to work are acceptable.

Requiring Medical Statements

Normally, the requirement to provide a medical statement to support the use of sick leave falls under one of the following categories:

- Some departments have a policy requiring employees to provide a medical statement if they are absent three or more days.
- Individual employees whose absenteeism is excessive are normally issued leave restriction letters that require them to provide medical statements any time they use sick leave as long as they are under the provisions of the leave restriction letter. These letters are issued if verbal counseling is not effective in correcting excessive absenteeism. Normally such letters, and the restrictions in them, are rescinded after six months to one year if the employee improves his/her attendance to an acceptable level.
- Individual employees who are not under leave restriction may be required to present a medical statement to support their use of sick leave if the circumstances of such use warrant substantiation. For example, if an employee's request for vacation on a particular day is denied and the employee then calls in sick, it would be appropriate to require that the employee submit a medical statement

upon their return to work. The employee must be advised of this requirement before they return to work, ideally at the time they call in.

- Employees who request Medical Leaves of Absence or Family and Medical Leaves of Absence are required to submit medical statements along with the leave application forms. The information below regarding acceptance of Medical Statements does not apply to requests for Leaves of Absence. Medical statements to support such requests must demonstrate that the treating health care professional has examined the individual (or their family member for FMLA leaves) and has determined that a leave of absence is required.
- Any time an employee uses sick leave in conjunction with a Workers Compensation claim, they are required to submit a statement from the treating health care professional. The information below regarding acceptance of Medical Statements does not apply to Workers Compensation cases.

Acceptance of Medical Statements

Often, when an employee is required to present a medical statement to support the use of sick leave, they return to work with a note that says “employee states he/she is ill and unable to work.” Usually, this occurs when the employee is in the Kaiser Health Plan. In most circumstances, such medical statements are acceptable to support the use of sick leave and should not be questioned by the supervisor/manager.

There are many minor or common illnesses and conditions for which health providers and insurers, and Kaiser in particular, will not routinely see a patient in person. This policy is due to medical priorities, cost containment, and the high probability that a phone assessment and advice will resolve the problem. Kaiser premium rates, and those of other HMO’s are driven, to a large degree, by utilization. Thus, when we force an employee to go into the office to be seen by a health care professional rather than following the guidance of the advice nurse, we are contributing to increased health insurance premiums for all employees. A department’s refusal to accept the form or letter supplied by the provider means another trip for the employee (more lost time from work) and may not result in any change in the statement provided.

Please feel free to call Employee Relations for guidance on this matter.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 22
Bereavement Leave

This bulletin is to clarify the use of sick leave for attending the funeral of a friend or family member who is not a member of the employee's immediate family.

The County Ordinance Code and the various MOUs provide that sick leave may be used for the employee's preparation for or attendance at the funeral of a member of the immediate family. Immediate family is defined as parent, spouse, domestic partner, son, daughter, sibling, step child, mother-in-law, father-in-law, grandparent, or grandchild.

Even though sick leave may not be used for attending the funeral of individuals who do not meet the definition above, use of accrued vacation, compensatory time or holiday time is appropriate. Managers and supervisors are strongly urged to make every effort to allow employees to be excused from work for attending funerals of friends and relatives who are not members of the immediate family.

In addition, many of the Memorandums of Understanding contain a provision for Bereavement Leave which states that the County will provide up to two days paid bereavement leave upon the death of an employee's parent, spouse, domestic partner, child or step-child. However this does not pertain to all County employees, so please reference your bargaining unit's Memorandum of Understanding, or contact your Employee Relations Analyst for clarification.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 23
Contracting Out

The MOUs with AFSCME and SEIU provide that the County will notify the Union in advance of its intent to contract or subcontract work where such contracting or subcontracting would result in loss or potential loss of jobs through attrition or layoff. The AFSCME MOU requires 90 days advance notice and the SEIU MOU requires 60 days advance notice. The MOUs further provide that the County will (1) include an explanation in the notification of the reason for proposing to contract out the work, (2) meet with the Union to discuss the decision to contract/subcontract, (3) meet and confer with the Union on the effect of such contracting out on employees, and (4) afford the Union, within 30 days from the date of notification, the opportunity to propose effective and economical alternative ways in which the services could continue to be provided by County employees.

Although the MOUs only require notification to the Union when contracting or subcontracting would result in the loss or potential loss of jobs, it is strongly recommended that you contact Employee & Labor Relations for guidance anytime you are planning to contract or subcontract work performed by County employees.

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 24
Guidance: “Meet and Confer” Obligations and Process

This memo describes and provides guidance regarding the process for meeting and conferring with employee organizations when there is a rule or workplace change that impacts that organization’s employees. The Employee & Labor Relations Division is available for consultation from the initiation of this process to conclusion. **Please consult with Employee & Labor Relations whenever you initiate a change in order to determine if you must or should notice employee organizations and/or meet and confer.**

WHAT IS “MEET AND CONFER?”

As part of the County’s relationship with the employee organizations, and as required by California law, management must provide reasonable advance written notice to employee organizations whenever it intends to implement a rule or workplace change that will likely affect employees in that department or unit. San Mateo County has incorporated this requirement into each of its Memoranda of Understanding (MOUs).

At the employee organization’s request, management has the obligation to meet and confer regarding the matter before implementation occurs, even if you have involved the employees in developing the planned changes and they are in agreement.

WHO IS COVERED?

All County Departments and Divisions are covered and these guidelines should be considered and used by all County management staff. One or more employee organizations may be involved, depending on the issue and which employees are likely to be affected.

WHAT IS THE IDENTIFYING TRIGGER?

The need to provide employee organization(s) with advance notice and an opportunity to “meet and confer” is triggered anytime the management of a department or sub-unit of a department plans to make a workplace change, and that change is likely to affect represented employees in some manner, even if the represented employees have agreed to the change. **Workplace changes include issues involving wages, hours, and other terms and conditions of employment.**

Some examples of common situations that would trigger the need to notify employee organizations and meet and confer if requested, include the following:

- **Establishing or adjusting a departmental sick leave policy**

Example: Management would like to implement a rule that all employees in the unit bring in a doctor’s note whenever they call in sick on a Friday or a Monday.

- **Changing a unit’s working hours**

Example: Management would like to change the “closing time” of an office from 5:00 p.m. to 7:00 p.m. two days per week.

- **Establishing or adjusting an alternative work schedule**

Example: Management wants to establish a 9/80 workweek in place of the traditional 40-hour workweek as a means to better service its customers.¹

- **Establishing a pay rate for a new assignment**

Example: Two staff need to receive special licensure to carry out new wastewater treatment duties that is typically paid higher in the market.

(HR handles all wage issues, and you should contact HR at the earliest opportunity).

- **Establishing or adjusting performance standards**

Example: Management wants to establish standards for the quality or quantity of work to be performed.

Not all changes trigger meet and confer obligations. The County’s Employer-Employee Relations Policy states that “the County retains the exclusive right to determine the methods, means, and personnel by which County government operations are to be conducted.” Decisions to make these types of changes are not subject to meet and confer. However, the County is still required to notify the union(s) of the change and meet and confer over the impact of the change. For example, a change in your computer system has the result of certain employees being required to enter and write their own reports, replacing the old method of support staff doing this work for them. While the computer change itself does not require notice to employee organizations, the impact the change may have on those employees being required to enter their own data and write reports does require notice to employee organizations.

While the above examples are helpful, they are not exhaustive. Departments should contact their Employee Relations representative in HR for guidance any time a change is contemplated.

WHAT DO WE DO IF WE DECIDE TO MAKE A CHANGE?

After consulting with Employee & Labor Relations, notify the employee organization(s) of the change in writing. The notice should describe the proposed change in detail and explain why the change is being planned. The written notice should be sent a minimum of four weeks before the proposed implementation date, providing two weeks for the employee organization(s) to receive the letter and

¹ It is not necessary to Meet and Confer when one employee’s schedule is changed within the framework of an existing schedule change, but you must Meet and Confer when you want to change the whole schedule even if the change will only impact one employee.

decide if they want to meet, and at least two additional weeks to schedule a meeting or meetings. In cases involving major or complex changes, more time should be allowed as multiple meetings may be necessary.

A sample letter is attached for you to use as a guide.

If not contacted by the employee organization(s), implement the change. If contacted by an employee organization, set a mutually agreeable date and time to meet.

WHAT DO WE DO TO PREPARE FOR THE MEETING?

It is important that you adequately prepare so that you present yourself at the meeting as being organized and knowledgeable about the specifics of the change and the reasons for the change. It is essential that management be able to explain the issue that is generating the need for the change.

We recommend that prior to the meeting you develop a document (or chart) that illustrates how the unit operates now, and how the unit will operate after the change. You might use separate pages for each or do a side-by-side comparison chart. Additionally, you should list the primary reasons for the change, and the benefits to the department or unit attributable to the proposed change, as well as any benefits to the affected employees.

You will have the most success with the implementation if any potential issues are resolved beforehand. Remember that the union may present facts or issues that you had not considered. Anticipating and troubleshooting potential faults or problems with the proposed plan is helpful. For example, put yourself in the place of the employees and the union, and analyze the proposed change from their perspective.

WHO ATTENDS THE MEETING?

You can expect a union representative, the union steward and one or more affected employees to attend. The union gets to select which employees attend, and often employees selected may not be those that will be directly impacted. Management can object to the number of employees if it impacts coverage or other operational needs.

Management may have one or more representatives attend. Generally, Department Heads do not attend as they might be required to review any final decision that is made. Management also has the option of asking Employee & Labor Relations to send a representative to attend.

WHAT DO WE DO AT THE MEETING?

Start the meeting by explaining the proposed change and the reasons for the change. You should use the comparison document you prepared as a guide to assist you in explaining the change, and you might also prepare an outline of the plan to share with those in attendance.

It is essential to remember that you must participate in this meeting in good faith. The Meyers-Milias-Brown Act, governing management-labor relationships in California local governments, mandates that you shall have the “obligation personally to meet and confer promptly upon request” and “continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation.”

The representative(s) may ask questions during your presentation. It is appropriate to answer questions that you feel comfortable answering. It is also appropriate to respond by saying that you'll have to research the question asked and that you will get back to them. It is essential that you do then get back to the representative(s) with the answers.

After you have completed your presentation, the employee organization representative(s) may offer their opinion on your proposal and present alternative suggestions. It is important to listen to their point of view. The employee organization may present facts or issues that you had not considered. Also, if an alternate approach is presented that meets your stated goals, you must fairly consider it and adopt it unless it involves additional costs or results in operational problems.

The union may also say they need to consider the proposal, and ask to schedule another meeting to present their response. Always schedule this next meeting and agree to a date at the time it is proposed, ensuring that the process moves forward. Call Employee & Labor Relations for guidance any time an employee organization cancels a meeting at the last minute, or appears to be delaying or slowing down the process.

Always take what the employee organization(s) representative(s) say under advisement and assure those at the meeting that you will get back to them. You should not become argumentative at the table, and only commit to changes at the table that you are sure are within County and Departmental management parameters. The decision to make changes or implement as originally planned should usually be made only after a subsequent meeting with management, and where appropriate, Employee & Labor Relations.

WHAT DO WE DO AFTER THE MEET AND CONFER?

Meet with upper management and/or HR to finalize the plan. Analyze proposed changes and alternatives that were made at the meeting, and incorporate them if they allow you to reach your objective without incurring excess cost or experiencing operational problems.

In your file, document the specific reasons why any proposed change/alternative has not been incorporated into the plan. This documentation will assist you later if your final plan is questioned, or if unforeseeable issues arise during implementation. If you do not have union agreement on the plan you intend to implement, contact Employee & Labor Relations to discuss this process and receive guidance on how to proceed.

Contact the employee representative(s) and verbally advise them of what you can and cannot agree to. Prepare a written document outlining the final plan and advise the employee representative(s) of the final plan. You will also need to communicate this information to the affected employees.

ADDITIONAL ATTACHMENTS

A flow chart covering the above steps and a sample notification letter are attached.

“Meet and Confer” Flowchart

IDEA



DEVELOP PLAN

CONSULT WITH YOUR MANAGEMENT TEAM / HR



TROUBLE SHOOT / BRAINSTORM

Don't forget to give yourself at least four weeks before the planned implementation date!



NOTIFY UNION AND DISCUSS WITH STAFF



PREPARE FOR MEETING

CONSULT WITH YOUR MANAGEMENT TEAM / HR



MEET AND CONFER



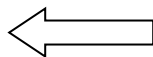
CONSIDER CHANGES

CONSULT WITH YOUR MANAGEMENT TEAM / HR



NOTIFY UNION OF DECISION

REVISE PLAN



DEVELOP AN IMPLEMENTATION PLAN



IMPLEMENT



MONITOR AND ADJUST IF APPROPRIATE

CONSULT WITH YOUR MANAGEMENT TEAM / HR

[DATE]

[UNION PERSON]

[UNION NAME]

[ADDRESS]

Dear [UNION PERSON]

We have been experiencing problems with weekend registrations in our customer service center. We are required to provide registration coverage 24 hours per day and 7 days per week. Currently, staff are assigned weekends on a rotating basis (four weekends on and four weekends off). We also have extra help staff working every weekend. The problem we are encountering is with sick calls. Currently, when someone calls in sick, it is up to either the service center supervisor or the on-duty staff to call around and see if anyone is willing to come in and cover. We have experienced situations where no staff are available to cover which puts us in a situation of having staff work double shifts on weekends.

To remedy this situation, we are proposing that staff be placed on-call for weekends. The on-call staff would receive on-call compensation and would be paid overtime if called in as provided in the MOU. We would first ask for volunteers for on-call assignments and then, for weekends where there are not volunteers, we would assign staff to be on-call, on a rotating basis based on seniority. In this way, staff would know well in advance when their on-call weekend was to occur. We would also allow staff to “trade” assigned on-call weekends due to conflicts with other engagements or commitments. We would start by having one individual on-call each weekend on a trial basis. This would work as long as sick calls are kept to a minimum. If we continue to experience multiple sick calls on the same weekend, we would need to add a second individual to each weekend on-call assignment. We have not polled staff about this, but I believe that there will be staff who want to be assigned on-call in order to earn the extra money.

Attached is a sample on-call schedule showing how this would work. We plan to implement the on-call system beginning [DATE – MINIMUM OF 6 WEEKS BEFORE IMPLEMENTATION]. Please call me at [PHONENUMBER] if you have any questions or if you wish to meet regarding this matter. To facilitate timely implementation, I would request that, if you do wish to meet, that meeting be held no later than DATE – THREE WEEKS FROM DATE OF LETTER].

Sincerely,

[NAME]

[TITLE]

cc: Your Employee Relations Analyst

**COUNTY OF SAN MATEO
HUMAN RESOURCES DEPARTMENT
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee & Labor Relations Manager

SUBJECT: Employee Relations Bulletin 25
Reference Checks

Occasionally, you may receive written or telephonic reference checks requesting information about current or former employees. This bulletin contains guidance on how best to respond to these requests without placing you or the County at risk.

1. WHAT GUIDELINES SHOULD I FOLLOW?

We recommend that the following guidelines be followed in responding to employment questions:

- (a) If you have any reason to believe that the person requesting information is not a potential employer or a licensing agency, do not give out information.
- (b) Provide information only in response to a verbal or written request for information. Do not volunteer information without a request for such information.
- (c) Do not give out any information that is not accurate, factual, and documented in the personnel file.
- (d) If you do provide information, you must provide any significant negative information as well as positive information. (This point is explained in greater detail in section 3 below).\
- (e) The personnel file itself, or any written documents from the file should be released only with a release from the former employee or in response to a subpoena. Prior to releasing information in response to a subpoena, you should contact County Counsel to ensure that correct legal process is followed.
- (f) Medical information should never be provided unless you receive an original signed release from the employee, and the release includes a specific statement that authorizes the release of that information. Care needs to be taken to ensure that you do not provide information beyond the scope of any medical request.
- (g) Do not provide information if there is any connection, other than the employer-employee relationship, between you and the person about whom information is being sought without prior consultation with Employee Relations or your Personnel Services Analyst.

2. WHAT OTHER FACTS DO I NEED TO KNOW?

California statute provides a qualified privilege for information given to potential employers or licensing agencies who contact the County seeking information. A qualified privilege means that no damages can result from your action, provided that you are not found to have been malicious. In addition to the guidance in Section 1 above, the following criteria must also be met:

- (a) Any statement you make must be made without malice. You and the County would be at peril if it could be shown that any statements which you made were made out of ill will toward the employee, if you lacked reasonable grounds for believing your statements to be true, or if the statements are made for a reason other than to protect the interest of the person seeking information (for instance, if your statements are made because of a previous grudge, a desire for someone else to get the job, etc.) If there is any fact that could indicate that you would be responding other than as an objective person, you should not respond. In these cases, seek guidance from your supervisor as to whether he or she, or some other manager, might provide the response.
- (b) You must honestly believe the information you give to be true and should never give out erroneous information. To meet this criteria, we recommend that you give out factual information borne out by the person's personnel file and that you not express opinions. If an employee was dismissed for excessive absenteeism and the dismissal and reason are documented in the file, it would be appropriate to state this fact. If the employee resigned and there is no written documentation stating that the employee was absent too often, it would not be appropriate to express your opinion that the employee's attendance record was below standard.

3. WHAT ARE THE MOST COMMON PITFALLS?

The two primary pitfalls to avoid are (a) providing information to anyone not considered a "person with an interest" (California statute), and (b) providing positive information without disclosing significant negative information (California case law).

- (a) A "person with an interest" is defined as someone who is in good faith considering hiring your employee, or is from a licensing agency. You should never give out information if you have reason to believe that the person is not who they say they are or if they are merely curious about an employee.
- (b) Recent California case law has held employers liable for providing positive feedback to a future employer, while withholding significant negative information. The most extreme example was that of a school that provided positive reviews of a vice principal to a prospective employer, but failed to disclose that the vice principal had molested a child. Other examples that would clearly apply include acts of violence, stealing, and dishonesty. If you have an employee or former employee with a record of one or more negative acts, the best practice is to discuss with Employee Relations before communicating anything to the reference checker.

While violence, physical abuse, and stealing are clear examples of significant negative acts, Managers and Supervisors will need to use their judgment as to whether lesser acts meet this test. For example, you are not obligated to disclose a singular incident in which an employee was dishonest in explaining why he was 10 minutes late for work one day; but you would need to disclose that a person was dishonest in falsifying records that resulted in a family friend receiving preferential treatment over other clients.

Since this is an area that is likely to expose you to the most liability, we advise you to contact Employee Relations prior to providing reference information anytime it involves an employee or former employee who was terminated for cause, resigned in lieu of dismissal, or was subjected to the equivalent of a suspension as a result of wrongful conduct. Employee Relations can assist you in providing your response based on that employee's specific circumstances.

4. WHAT ELSE DO I NEED TO KNOW?

Contact your Employee Relations Analyst any time you are unsure what to do.

**COUNTY OF SAN MATEO
HUMAN RESOURCES
Inter-Departmental Correspondence**

DATE: April 21, 2014

TO: All Management Employees

FROM: Nicole McKay, Employee Relations Manager

SUBJECT: Employee Relations Bulletin 26
Breaks for Nursing Mothers

Background

There is a new law that requires employers to provide a reasonable break time for nursing mothers to express breast milk for her nursing child for one year after the child's birth each time such employee needs to express milk". The employer must also provide the nursing mother a private "place" to express milk defining such "place" as a location that is "shielded from view and free from intrusion from co-workers and the public". The room must have access to an electrical outlet and a door that can be secured. The law specifically excludes "bathrooms" as an appropriate "place".

Compensation

Under the law the employer is not required to compensate mothers taking such breaks during work time. The employer may not, however, dictate the scheduling of the break time. Instead, the mother may take a "reasonable" break time each time she has the need to do so. Thus, if a mother utilized her rest breaks to express milk she is paid for the time just as any employee utilizing a rest break would be (rest breaks are typically two 15 minutes breaks over an 8 hour shift). If a mother utilized lunch time or took a break to express at a time other than a scheduled rest break, the employer is not required to pay her for that time.

Location

Many County offices already have designated lactation rooms. In other offices, nursing mothers usually are able to find a vacant, private office they can use. If a nursing mother requests a private location to express milk and no such location is available in the facility, please call Denise Brown for guidance.

Please communicate this information to all supervisors. Any questions regarding this bulletin should be referred to your Employee Relations Analyst.

References:

Patient Protection and Affordable Care Act of 2010
Lactation Accommodation Law (AB1025)

Index

- 3 Phases of the Skelly Process, 44
- Alternative Work Schedules, 157
- Below Standard Evaluation, 23
- Civil Service Appeals, 143
 - Disciplinary Action, 146
 - guidelines, 143
 - how, 143
 - Performance Evaluations, 144
 - What can be appealed, 143
- Civil Service Personnel File, 14
- Classified and Unclassified Employment, 149, *See*
 - Unclassified Employment, *See* Classified Employment
 - Comparison, 152
- Classified Employment, 149
- Conduct, 38, 79
 - not meeting expectations, 79
 - Progressive Discipline, 80
 - Sample Counseling Memo, 84
 - Sample Letter of Reprimand, 86
 - Sample Letter of Warning, 85
 - Sample Skelly Decision Letter, 89, 93
 - Sample Skelly Intent Letter, 87
 - Sample Skelly Letter of Intent, 91
 - Supervisor Responsibility, 79
 - what to do, 80
- Corrective Action and Disciplinary Action, 39
- County Ordinance Code, 30
- Department Personnel Files, 14
- Discussion of Performance, 59
- Documentation
 - definition, 13
 - Example, 16, 19, 23
 - files, 14
 - what to document, 13
 - why, 13
- DOCUMENTATION, 12
- EAP, 134
 - how employees use it, 134
 - referral, 135
 - referral checklist, 137
 - referral guideline, 136
 - Supervisor responsibility, 134
- Employee Assistance Program. *See* EAP
- Example/Sample
 - Acknowledgement Letter, 37
 - Assignment to work at alternate location letter, 110
 - Below Standard Evaluation, 23
 - Counseling Memo, 84, 126
 - Interview Questions, 107
 - Leave Restriction Letter, 127
 - Letter of Reprimand, 86, 129
 - Letter of Warning, 85
 - Performance Plan, 54, 55, 56, 58
 - Performance Report, 71
 - Pre-Evaluation Memo, 64, 66
 - Probationary Employee Termination, 33
 - Probationary Extension, 19
 - Probationary Period Extension, 31, 32
 - Probationary Rejection, 16
 - Resignation, 36
 - Skelly Decision Letter, 76, 89
 - Skelly Decision Letter, 93
 - Skelly Decision Letter, 132
 - Skelly Intent Letter, 87, 91, 130
 - Skelly Intent to Dismiss, 73
 - Supervisor Transition Memo, 69
 - Transfer or Demotion, 34
- Family and Medical Leave (FMLA), 167
- Feedback Sessions, 59
- FLSA Covered Employees in Work Group 1, 160
- FLSA Exempt Employees in Work Groups 2 and 5, 160
- Form
 - FMLA-CFRA Leave Policy and Medical Certification Form, 112
 - Leave of Absence Form, 166, 173
 - Leave of Absence Request Form, 173
 - Report of Incident or Unsafe Condition, 106
- Grievance and Appeals, 138
 - Matrix, 139
- Grievance Process, 140
 - Steps, 140
 - Steps (graphic), 142
- Informal Flex Schedules, 160
- job specification table, 27
- Labor Relations. *See* Union
- LABOR RELATIONS, 175
- Layoff
 - Post-Employment Rights, 156
 - Process for at risk employee (graphic), 155
- Layoffs
 - How are layoffs determined, 154
- LEAVES OF ABSENCE, 166, *See* LOA

- LOA
 - “Reduced” or “Intermittent” FMLA/CFRA leave, 168
 - approval process, 170
 - Combine leave types, 170
 - Educational Leave of Absence with Pay, 172
 - employee returning, 170
 - Family and Medical Leave (FMLA), 167
 - FMLA, 168
 - FMLA/CFRA eligibility, 167
 - hold the employee’s position, 166
 - Illness or Injury (Medical Leave), 167
 - Leave of Absence for Personal Reasons, 171
 - Leave of Absence Request Form, 173
 - medical certification form, 168
 - Medical Statement, 172
 - Military Leave of Absence, 171
 - Other Leave, 172
 - Parental Leave of Absence, 169, 171
 - Personal Leave of Absence, 169
 - Serious Health Condition, 168
 - Types of Leave and How They May Interconnect, 171
- Non-Punitive Discipline, 81
 - Objectives, 82
 - Overview, 82
- Non-Punitive Discipline, 39
- Online Resources, 188
- Performance, 38
 - Evaluation Flowchart, 63
 - evaluation process, 59
 - expectations, 50
 - not meeting expectations, 61
 - Sample Evaluation Memo, 64, 66
 - sample objectives, 51
 - Sample Performance Plan, 54, 55, 56, 58
 - Sample Performance Report, 71
 - Sample Skelly Decision Letter, 76
 - Sample Skelly Intent to Dismiss Letter, 73
 - Sample Transition Memo, 69
 - Supervisor responsibility, 49
- PERFORMANCE, 49
- Performance and Conduct
 - corrective action, 39
 - disciplinary action, 39
 - distinction, 38
 - non-punitive discipline, 39
 - the difference, 38
- PERFORMANCE AND CONDUCT, 38
- Performance Evaluation, 60
- Performance or Conduct, 40
- Probationary Extension due to Performance, 19
- Probationary Periods
 - extension, 28
 - fail probation, 29
 - grievance/appeal, 30
 - how long, 27
 - pass probation, 29
 - request for transfer/demotion, 34
 - Sample, 31, 32, 33
 - Sample acknowledgement, 37
 - Sample resignation, 36
 - supervisory responsibilities, 28
 - transfer, 29
 - vacation while on probation, 30
 - Who, 27
- PROBATIONARY PERIODS, 27
- Probationary Rejection for Attendance, 16
- Reference Checks
 - Common Pitfalls, 187
 - Guidelines, 186
- REFERENCE CHECKS, 185
- Rest Breaks, 157
- Sample 4/10 and/or 9/80 Work Schedule Agreement, 162
- Seniority
 - approved leave of absence, 153
 - breaks in County service, 154
 - Extra Help time, 153
 - FMLA, 153
 - how is a tie broken, 154
 - How is seniority calculated?, 153
 - overtime, 153
 - probationary status, 154
 - unclassified service, 153, 154
 - voluntary time off (VTO), 153
 - workers’ compensation, 153
- SENIORITY & LAYOFF, 153
- Skelly Process, The
 - Decision Letter, 48
 - Employee reply, 46
 - intent letter, 44
 - how, 45
 - who, 45
 - procedures, 42
 - Sample Decision Letter, 76, 89, 93
 - Sample Intent letter, 87, 91
 - Sample Intent to Dismiss Letter, 73
 - steps, 43
- SKELLY PROCESS, THE, 41
- Special Performance Evaluations, 60
- Substandard Performance Evaluations, 60
- Supervisory Files, 14

- Timeliness of Performance Evaluations, 60
- transfer, 29
- Unclassified Employment, 149
 - changing from classified, 150
 - changing to unclassified, 150, 151
 - examinations for positions, 150
 - health benefits, 151
 - how to hire, 150
 - Measure D, 149
 - retirement benefits, 151
 - transfers, 151
 - what positions, 149
 - why, 149
- Unclassified Employment, 150
- Union
 - Agency Shop, 176
 - business agent or steward, 175
 - Meet and Confer, 177
 - Meet and Confer Flowchart, 181
 - Positions Represented By Unions, 184
 - role of a union, 175
 - Sample Notice to Union(S), 183
 - stewards, 176
 - steward's rights, 175
 - successful labor relations, 182
 - union representation, 176
- vacation, 30
- Websites, 188
 - Administrative Memo E-13, 52
 - Civil Service Commission Rules, 44
 - Contact Employee & Labor Relations, 11
 - County Intranet, 11
 - Employer-Employee Relations Policy, 175
 - FMLA-CFRA Leave Policy and Medical Certification Form, 112
 - HR Website, 3
 - Incident Report
 - Unsafe Condition Form, 106
 - Job Classification Table, 27
 - Leave of Absence Form, 166, 173
 - MOU, 140, 184
- WORK SCHEDULES, 157