

2018



# Mid-Region Council of Governments

## Personnel Policies



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Executive Director

2018 Policies

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## INTRODUCTION

The Mid-Region Council of Governments of New Mexico (“MRCOG”) hereby establishes personnel policies to govern personnel administration. These policies define a system based on merit and state the principles that guide employment with MRCOG.

Readers should interpret these policies as a whole rather than in individual sections or sentences. The Executive Director is the final authority on the interpretation of these policies. The Executive Director of the MRCOG may, in his/her sole discretion, issue other policies, directives and procedures that supplement, change, replace, suspend or rescind any part or parts of these personnel policies at any time and without prior notice. Any such action shall apply to existing as well as future employees with continued employment being the consideration between the MRCOG and employee. The MRCOG will provide each employee with an electronic or hard copy of any changes made to these personnel policies. The date of any type of change to a policy shall be noted on the first page of the revised policy. No one other than the Executive Director of the MRCOG may alter or modify any of these personnel policies. No statement or promise by a supervisor may be interpreted as a change in policy, nor will it constitute an agreement with an employee.

This MRCOG Personnel Policies manual replaces all other previous personnel policies, directives and procedures as of January 1, 2016. The policies in this manual apply to all employees of the MRCOG with the exception of the Executive Director who shall serve at the pleasure of the Board of Directors.

Should any provision in the MRCOG Personnel Policies be found to be unenforceable and invalid, such finding will not invalidate the entire policy, but only the subject provision(s).

### **EQUAL EMPLOYMENT OPPORTUNITIES**

The MRCOG is an equal employment opportunity employer. The MRCOG prohibits discrimination of qualified persons based on race, religion, color, gender, age, national origin, disability, sexual orientation or any other characteristic protected by applicable federal, state or local law. The MRCOG complies with all federal, state and local employment laws unless specifically exempted therefrom. The MRCOG's compliance applies to all phases of the employment relationship, including recruitment, hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment. Furthermore, to the extent required by law, the MRCOG will make reasonable accommodations for qualified individuals with disabilities unless doing so would result in an undue hardship.

**SECTION 1. RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR FOR PERSONNEL FUNCTIONS**

The Executive Director shall have the following responsibilities:

- 1.1 Execute the policies of the Board of Directors and Executive Board;
- 1.2 Exercise leadership in and encourage the development of effective personnel administration within the MRCOG;
- 1.3 Hire, promote, evaluate, transfer, assign, demote and dismiss employees of the MRCOG;
- 1.4 Determine staffing requirements;
- 1.5 Institute necessary procedures related to employee relations as provided for in this policy manual;
- 1.6 Make changes to this policy manual as may become advisable;
- 1.7 Designate an acting director to assume the duties of the Executive Director in the event of his/her inability to act or absence from the area; and

**SECTION 2. RESPONSIBILITIES OF THE HUMAN RESOURCES MANAGER**

The Human Resources Manager, under the general direction of the Executive Director, shall have primary responsibility for matters relating to all administrative and technical aspects of personnel administration, including, but not limited to, the following duties:

- 2.1 Maintain an effective personnel system for the MRCOG; Maintain a Wage and Salary Schedule.
- 2.2 Prepare and recommend to the Executive Director such changes in this policy manual as may be considered necessary, appropriate, or desirable;
- 2.3 Maintain job descriptions and assure that they are kept on file;
- 2.4 Establish and maintain a personnel file on each staff person, that includes the employee's job title, pay status, background information, training certificates, performance records and other relevant data;
- 2.5 Develop appropriate procedures for applicant examinations and employee work performance evaluations.

## **SECTION 3. EMPLOYMENT WITH THE MRCOG**

### **3.1 *Categories of Employment***

- 3.1.1** A classified employee is either a full-time or a part-time employee, with the exception of the Executive Director, who has completed the required probationary period.
- 3.1.2** A full-time employee is one who has completed the required probationary period, and works 40 hours or more per week.
- 3.1.3** A part-time employee is one who has completed the required probationary period and works less than 40 hours per week.
- 3.1.4** An unclassified employee is one who serves at the will of the Executive Director, except the Executive Director, who serves at the will of the Board of Directors. Unclassified employees have no property interest in continued employment and are subject to termination for any or no reason and are not covered by Sections 24 and 25 of these policies. Temporary employees, students, interns, probationary employees and the Executive Director are unclassified employees.
- 3.1.5** A temporary employee is any MRCOG employee who is given a definite termination date at the time of appointment and whose length of service may not exceed 12 months. If workload and budget allow, a status change may be made, prior to 12 months as determined by the Executive Director.
- 3.1.6** A student employee is one who is enrolled in a public or private high school or at an educational institution whose academic credits would be accepted by a state educational institution and who carries at least 12 credit hours or full-time student status during at least 8 months in any calendar year.
- 3.1.7** An intern is an employee who works in a position that MRCOG designates as temporary and lasts no more than nine consecutive months. Interns are compensated but not eligible for employee benefits.
- 3.1.8** A probationary employee is any MRCOG full-time or part-time employee who has not completed the final phase of the selection process.

### **3.2 *Classification of Positions***

The MRCOG classifies positions into a clerical/blue collar, professional, or management category according to the duties, authority, responsibilities and qualifications required of the position. The Wage and Salary Schedule identifies the classification of each position.



### **3.3 *Filling Vacancies***

- 3.3.1** Vacant positions at the MRCOG will be filled with the best-qualified candidate as determined by the MRCOG Executive Director.
- 3.3.2** All full time positions will be advertised to MRCOG employees. Resumes from persons outside the MRCOG may be considered at the same time.
- 3.3.3** All applicants for advertised positions shall submit a resume to the MRCOG Human Resources Manager, with copies of licenses or certifications held, or other appropriate supporting documents on or before the closing date for recruitment. Incomplete resumes will not be considered.
- 3.3.4** No person will be hired unless he/she submits a resume for employment. The MRCOG will only accept resumes for current job openings. Unsolicited resumes for “any opening” will be declined. A person interested in more than one open position with the MRCOG must submit a resume for each position.
- 3.3.5** The Human Resources Manager or designee shall check personal references, conduct a background check to the extent permitted by law and verify other information provided by the applicant. Applicants shall be advised in the job advertisement that they are subject to such reference and background checks and data verification. All such inquiries, whether made in person, by telephone or in writing, shall be documented and made a part of the applicant’s file. All such responses that constitute personal statements which are a matter of opinion are confidential and not open to public inspection.
- 3.3.6** The MRCOG relies upon the accuracy of information provided by the applicant, as well as the accuracy of other information provided throughout the hiring process and during the course of employment. Any misrepresentations, falsifications or material omissions in any of this information or data may result in the MRCOG’s exclusion of the individual from further consideration for employment or, if the person has been hired, termination of employment.

### **3.4 *Probationary Period***

- 3.4.1** As a condition of employment, all employees must serve a probationary period of 12 months. The probationary period is the final test in the selection process and evaluates actual performance on the job. The MRCOG will use the probationary period to closely evaluate the employee's performance and guide the employee in effectively adjusting to his/her new position. An employee serving a probationary period does not have a legitimate entitlement to continued employment and may be terminated with or without notice at any time during the probationary period without reason or for any reason that is not prohibited by law.

- 3.4.2** At least 2 weeks prior to the end of the probationary period, the supervisor will conduct an evaluation and recommend to the Executive Director whether the probationary employee should be retained or terminated. Before the expiration of the probationary period, the Executive Director will make a final decision to retain or terminate a probationary employee.
- 3.4.3** With the approval of the Executive Director and recommendation of the Human Resources Manager, probationary periods may be subject to a maximum 60 day extension for further evaluation of an employee's performance. Further, the Executive Director has the discretion to allow a probationary employee to be absent for a period not to exceed 2 months based on an attending physician's advice. In this circumstance, the probationary period will be extended accordingly.
- 3.4.4** A probationary employee is not entitled to the rights and benefits of the MRCOG's disciplinary, appeal and grievance procedures.

### **3.5 *Performance Evaluation***

The MRCOG maintains a system to review the work performance of its employees based on their respective job descriptions. Each employee's supervisor will prepare an evaluation of the employee's work performance no later than 2 weeks prior to the end of the probationary period and on each subsequent anniversary date of achieving classified status. In addition to the required evaluations, a supervisor may also conduct an evaluation at any other time as deemed appropriate. A managerial or supervisory level employee's evaluation will be conducted by his/her immediate supervisor or, if there is none, by the Executive Director.

Performance evaluations affect decisions concerning compensation, promotion and disciplinary actions. Annual performance evaluations will be conducted regardless of any financial decision.

### **3.6 *Layoff Status***

In the unforeseen event that layoffs become necessary, the Executive Director will determine the needs of the MRCOG and make decisions based on seniority of staff and the staffing resources necessary.

## **SECTION 4. COMPENSATION**

- 4.1** Compensation, including salary increases and longevity pay, shall be in conformance with the Wage and Salary Schedule.
- 4.2** A performance or merit increase in pay may be granted to employees based on exceptional performance and other relevant factors, including, but not limited to, funding availability. Annually, the Executive Director will determine if merit increases will be available.

- 4.3** Overtime work performed by FLSA non-exempt employees will be compensated at one and one-half times the employee's base hourly rate.

## **SECTION 5. WORK HOURS**

MRCOG employees will perform their work in a responsible manner, observing scheduled work hours and complying with the MRCOG policy governing sick and vacation leave usage.

- 5.1** Office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. Lunch periods are usually one hour with one 15-minute break in the morning and one in the afternoon. Employees may not accumulate break periods to extend lunch periods or change the time of arrival to or departure from work. Employees will establish a work schedule, including definite times for lunch breaks within prescribed limits, subject to the Executive Director's or designee's approval. Deviation from these schedules requires prior approval.
- 5.2** The Executive Director will consider individual requests to deviate from regular office hours. An employee should submit a written request for approval by their supervisor and the Executive Director, along with an explanation of the reasons. The Executive Director will evaluate requests based on the needs of the MRCOG and the employee's performance. In addition, the Executive Director may adopt a formal flextime policy. Any approved schedule change will take effect the first full pay period following the approval.
- 5.3** A non-exempt employee shall not work more than the regularly scheduled 40-hour workweek without approval of the immediate supervisor. Working overtime without approval of justification for unplanned overtime is just cause for disciplinary action up to and including termination. See Kronos (timecard) policy for details.
- 5.4** When overtime is required for non-exempt employees, compensation will be in accordance with the Fair Labor Standards Act and New Mexico law. All paid leave is part of the 40-hour workweek. Non-exempt employees will be paid for actual time worked.

## **SECTION 6. OUTSIDE EMPLOYMENT**

Outside employment without the Executive Director or designee's written permission is prohibited for full-time employees and is cause for dismissal. Employees who are receiving Workers' Compensation total disability payments, hardship leave or donated leave shall not engage in outside employment. For purposes of this section, self-employment is outside employment.

## **6.1 General Policy**

The Executive Director or designee may authorize outside employment for a period up to one year, with annual renewals. Employees must request approval in writing prior to engaging in outside employment and renew the request in January of each year. Employees approved for outside employment may not work more than a total of 60 hours per week for the MRCOG and outside employment combined. MRCOG employees performing work for the MRCOG outside their normal duties may not be considered independent contractors. All such work shall be paid through the normal payroll process.

## **6.2 Criteria for Authorization of Outside Employment**

Prior to approving a request for outside employment, the Executive Director or designee will determine whether the request meets the following criteria:

- 6.2.1** The duties or services of the proposed outside employment will not create an actual or perceived conflict of interest for the employee or assigned subordinates while serving in an official capacity with the MRCOG;
- 6.2.2** The proposed outside employment will not defame, embarrass or discredit the MRCOG; and
- 6.2.3** The employee has a satisfactory work record and there is a reasonable assumption that it will continue if approved.

## **6.3 Rescission of Outside Employment Approval**

The Executive Director or designee may rescind the authorization for outside employment if such employment has a negative impact on the employee's job performance for the MRCOG. This action is not subject to the grievance procedures defined in Section 25 (Appeal from Suspension, Demotion and Dismissal) or Section 26 (Resolution of Non-disciplinary Concerns) of these Personnel Policies.

## **SECTION 7. CONFLICT OF INTEREST**

- 7.1** No employee shall acquire a financial interest when he/she knows or has reason to believe that his/her official actions will directly affect that interest.
- 7.2** Every employee who has a financial interest that he/she knows or has reason to believe may be affected by an official act taken within the scope of the employee's duties shall disclose the precise nature and value of such interest to the Executive Director. The disclosure shall be made in writing to the Executive Director before entering MRCOG employment, and during the month of January every year thereafter.

Additionally, each employee has the duty to inform his or her supervisor of such a financial interest at the time he or she acquires it. The MRCOG will make available the information on the disclosures, except for the valuations attributed to the reported interests, for inspection to any citizen pursuant to the Inspection of Public Records Act, NMSA (1978), §14-12-1 et seq. (as amended). The valuation shall be confidential. Filing disclosures pursuant to this section is a condition of entering into and maintaining MRCOG employment.

- 7.3** Employees shall disqualify themselves from participating in any official act directly affecting a business in which they have a financial interest.
- 7.4** No employee shall use confidential information acquired by virtue of his/her employment for his/her or another's private gain.
- 7.5** Violation of the provisions of this section by any employee is grounds for disciplinary action including dismissal.

## **SECTION 8. STANDARDS OF CONDUCT**

### **8.1 *Employee Conduct***

Employee conduct shall, at all time, conform to the highest personal and professional standards in order to promote public confidence and trust in the MRCOG and public entities and to merit the respect and cooperation of co-workers and the community. However, to avoid confusion, some of the more obvious unacceptable activities are noted below. This list is not all-inclusive and is not intended to refer to all possible infractions. It is provided as a reference of the most common instances of unacceptable conduct that is just cause for discipline, up to and including termination. If you have any questions concerning any work or safety rule, or any of the unacceptable conduct listed, please contact the Human Resources Manager for an explanation.

- 8.1.1** Unsatisfactory work performance, including failure to obtain necessary instructions or clarification.
- 8.1.2** Insubordination or refusing to obey instructions properly issued by the employee's supervisor pertaining to the employee's work; refusal to help out on a special assignment; refusal to work overtime.
- 8.1.3** Use of official position or authority for personal profit or advantage.
- 8.1.4** Leaving work before the end of a workday or not being ready to work at the start of a workday without approval of the employee's supervisor; stopping work before time specified for such purposes.
- 8.1.5** Failure to report an absence or late arrival; excessive absence or lateness. Any act of unlawful harassment, discrimination or retaliation as set forth in these Personnel Policies.
- 8.1.6** Violation of any MRCOG rule or Board policy; any action that is extreme in nature and is obviously detrimental to the MRCOG's efforts to operate efficiently.

- 8.1.7** Violation of security or safety rules or failure to observe safety rules or MRCOG safety practices; failure to wear required safety equipment; tampering with MRCOG equipment or safety equipment.
- 8.1.8** Negligence or any careless action which endangers the life, safety or property of another.
- 8.1.9** Being intoxicated or under the influence of controlled substance drugs while on duty, on MRCOG premises, operating a MRCOG vehicle or representing the MRCOG; use or possession or sale of controlled substance drugs while on duty, on MRCOG premises, operating a MRCOG vehicle or representing the MRCOG. There is an exception for medications prescribed by a physician and that do not impair work performance.
- 8.1.10** Unauthorized possession of dangerous or illegal firearms, weapons or explosives while on duty, on MRCOG premises, driving a MRCOG vehicle or representing the MRCOG.
- 8.1.11** Engaging in criminal conduct or acts of violence, or making threats of violence toward anyone while on duty, on MRCOG premises, operating a MRCOG vehicle or representing the MRCOG. Fighting, horseplay or provoking a fight is prohibited.
- 8.1.12** Intimidating or coercing a member of the public or fellow employees for any reason while on duty, on MRCOG premises, operating a MRCOG vehicle or while representing the MRCOG.
- 8.1.13** Obscene, abusive or rude language or behavior toward any supervisor, employee or member of the public; any disorderly/antagonistic conduct.
- 8.1.14** Misuse or abuse of MRCOG tools, equipment, vehicles or other property.
- 8.1.15** Speeding or careless driving of any MRCOG vehicle.
- 8.1.16** Failure to immediately report damage to, or an accident involving MRCOG vehicles or equipment.
- 8.1.17** Theft of MRCOG property or the property of fellow employees; unauthorized use of MRCOG equipment or property for personal reasons; unauthorized possession or removal of any MRCOG property, including documents, from the premises unless (a) working documents are removed temporarily for the purpose of working on them outside the office, (b) authorization is provided in the employee's job description, or (c) prior permission is obtained from the Executive Director.
- 8.1.18** Dishonesty; willful falsification, misrepresentation or unauthorized alteration on an application for employment or other work records or data, including timesheets and requests for leave; Unauthorized use or destruction of MRCOG records, reports or other data belonging to MRCOG.
- 8.1.19** Disclosure of confidential information from MRCOG records or documents to any unauthorized person or entity.
- 8.1.20** Malicious gossip and/or spreading rumors; engaging in behavior designed to create discord and lack of harmony; interfering with another employee on the job; willfully restricting work output or encouraging others to do the same.
- 8.1.21** Conducting a lottery or engaging in gambling on MRCOG premises.
- 8.1.22** Smoking in restricted areas.
- 8.1.23** Creating or contributing to unsanitary conditions.

- 8.1.24** Soliciting during working hours and/or on MRCOG premises; selling merchandise or collecting funds of any kind for whatever purpose without the Executive Director's prior authorization.
- 8.1.25** Failure to maintain a neat, clean and professional appearance in terms of the standards established by the employee's supervisor; wearing unsafe clothing to perform the employee's specific job duties.
- 8.1.26** No person shall willfully or corruptly make any false statement, certificate, mark, rating, or report concerning any test, certification, appointment, or investigation, or in any manner commit any fraud, conceal any wrongdoing or knowingly withhold information about wrongdoing in connection with employment with the MRCOG or in connection with the employee's official duties.
- 8.1.27** Other acts or omissions that adversely impact the effective operation of the MRCOG or reflect poorly on the MRCOG.

## **8.2 *Compliance with the Governmental Conduct Act***

- 8.2.1** All MRCOG employees must be familiar with and adhere to the applicable provisions of the Governmental Conduct Act, NMSA (1978), §10-16-1, et seq. (as amended), which sets forth the ethical principles of public service and prohibitions of certain official acts.
- 8.2.2** No person seeking appointment to or promotion in the service of the MRCOG shall either directly or indirectly give, render, or pay any money, service, or other valuable thing to any person, for, or on account of, or in connection with any appointment, proposed appointment, promotion or proposed promotion. Payments made to duly licensed employment agencies are exempted.
- 8.2.3** A MRCOG employee shall not accept any reward, favor, gift, emolument, or other form of remuneration for the performance or non-performance of his/her duties from any vendor, contractor, individual, or firm doing business with the MRCOG or who can reasonably anticipate doing business with the MRCOG in the future, or from any other source having or proposing to have any relationship with the MRCOG. This section shall not be construed to prohibit an occasional non-pecuniary gift of insignificant value; an award publicly presented in recognition of public service, acts of heroism, or for solving crimes; or a commercially reasonable loan made in the ordinary course of business by an institution authorized by the laws of the State to engage in the business of making loans.

## **8.3 *Nepotism***

The MRCOG will not employ a relative, by blood or marriage, of an employee or Board member in any position with the MRCOG in which the employee may be able directly to supervise, control or influence the work or employment status of the relative or the affairs of the organizational unit in which the relative is employed. The term "relative" includes spouse, domestic partner, child, stepchild, mother, father, grandparents, grandchild,

mother-in-law, father-in-law, brother, sister, brother-in-law, sister-in-law, son-in-law and daughter-in-law. The term also includes relatives of a domestic partner.

## **8.4 Political Activities**

### **8.4.1 Permitted Political Activities**

All MRCOG employees:

- 8.4.1.1** Are encouraged to register to vote;
- 8.4.1.2** Have a right to express their opinions on all political subjects and candidates;
- 8.4.1.3** May serve as convention delegates;
- 8.4.1.4** May sign nominating petitions and make voluntary contributions to political organizations;
- 8.4.1.5** May engage in political activity on their own time; and
- 8.4.1.6** May serve as an election official.

### **8.4.2 Prohibited Political Activities**

MRCOG employees are prohibited from the following political activities:

- 8.4.2.1** Using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office, or for any other political purpose.
- 8.4.2.2** Directly or indirectly coercing, attempting to coerce, commanding or advising a state or local official or employee to pay, lend, or contribute anything of value to a candidate, party, committee, organization or person for a political purpose.
- 8.4.2.3** Accepting and/or soliciting campaign contributions for any candidate, political party, committee or other similar organization for any election or pre-election activity during working hours, on MRCOG property, or in the scope of their MRCOG employment.
- 8.4.2.4** Requiring employees to contribute part of their pay to a political fund, influencing subordinate employees to buy tickets to political fund-raisers and similar events, advising employees to take part in political activity and matters of a similar nature. MRCOG employees, including the Executive Director, are not required to make contributions to any political candidate, party or similar organization, or participate in any political activities. The MRCOG will not take any negative action against employees, including the Executive Director, who decline to make political contributions or get involved in political activities
- 8.4.2.5** Engaging in any other political activities while on duty.
- 8.4.2.6** Using any MRCOG owned equipment, supplies, vehicles, space or property for political purposes.



- 8.4.2.7** Be a candidate for or hold any elective office of any governmental entity within New Mexico State Planning and Development District 3. Employees who hold elected positions prior to employment with the MRCOG are grandfathered into their respective position and may continue to run for and hold office with prior notification to the Human Resource Manager. Campaigning during regular MRCOG office hours is prohibited.

## **SECTION 9. DISCRIMINATION, HARASSMENT AND RETALIATION PROHIBITED**

The MRCOG strives to maintain a workplace that fosters mutual employee respect and promotes harmonious, productive working relationships. Each individual has the right to work in a professional atmosphere that promotes equal treatment and prohibits discriminatory practices, including harassment. The MRCOG believes that illegal discrimination, harassment and/or retaliation in any form constitute misconduct that undermines the integrity of the employment relationship. Therefore, the MRCOG will not tolerate any form of unlawful discrimination, harassment or retaliation. Violation of this policy will result in discipline, up to and including termination.

### **9.1.1 *Discrimination***

**9.1.2** Discrimination occurs when an individual is negatively impacted in any aspect of his/her employment because of his/her race, religion, color, sex, age, national origin, handicap, disability, medical condition, veteran status, spousal affiliation, sexual orientation or any other legally protected status.

**9.1.3** Discrimination against an employee in any aspect of his/her employment, such as hiring, promotion, discipline, compensation, or any other terms, conditions or privileges of employment because of his/her legally protected status will not be tolerated at the MRCOG to the extent prohibited by law.

### **9.2 *Types of Harassment***

**9.2.1 *Sexual Harassment.*** Sexual harassment is a form of discrimination and is illegal under federal and state laws. For purposes of this policy, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when, for example: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) a reasonable person would regard such conduct as having the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. Sexual harassment may include a range of subtle and not so subtle behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these behaviors may include, but are not limited to, the following: unwanted sexual jokes, flirtations,

advances or propositions; demands or requests for sexual favors in exchange for favorable treatment or continued employment; sexual jokes and innuendo; verbal abuse of a sexual nature; graphic commentary about an individual's body, sexual prowess or sexual deficiencies; leering, whistling, catcalls or touching; insulting or obscene comments or gestures; display or circulation of sexually suggestive objects or pictures (including through e-mail, text or other electronic means); engaging in indecent exposure; and other physical, verbal or visual conduct of a sexual nature.

**9.2.2 Harassment Based on Other Protected Characteristics.** Harassment on the basis of any other legally protected characteristic is also strictly prohibited. Under this policy, such harassment is defined as verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, sex, national origin, age, disability, citizenship, sexual orientation or any other characteristic protected by law and that: (1) has the purpose or effect of creating an intimidating, hostile or offensive work environment; (2) has the purpose or effect of unreasonably interfering with an individual's work performance; or (3) otherwise adversely affects an individual's employment opportunities. Harassing conduct includes, but is not limited to epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes and displays or circulation (including through e-mail) of written or graphic material that denigrates or shows hostility or aversion toward an individual or group.

### **9.3 Retaliation**

The MRCOG prohibits retaliation against any individual who in good faith reports discrimination or harassment, participates in an investigation of reported discrimination or harassment, or assists or supports a fellow employee in reporting discrimination or harassment. Examples of retaliatory conduct include, but are not limited to, imposing discipline, changing work conditions, failing to respond to a co-worker's call for help or assistance because that individual has complained about or resisted discrimination or harassment. Retaliation against these individuals is a serious violation of this policy and, like discrimination or harassment itself, will be the subject of disciplinary action, up to and including termination.

### **9.4 Individuals and Conduct Covered**

These policies apply to all employees and prohibit harassment, discrimination and retaliation by fellow employees, supervisors or by someone not directly connected to the MRCOG (e.g., outside vendors, consultants, or employees of member governments). Conduct prohibited by these policies is unacceptable in the workplace and in any business related setting outside the workplace, such as during MRCOG business trips, meetings, seminars and MRCOG business-related social events.

## **9.5 Complaint Procedure**

### **9.5.1 Reporting an Incident of Harassment, Discrimination or Retaliation**

Any employee who believes that he or she has been discriminated against, sexually harassed or retaliated against may initially choose to deal with the alleged offender directly through a face-to-face discussion, a personal telephone conversation, e-mail correspondence, or letters. In some cases this may effectively resolve the situation. However, an employee should not feel pressured and is not required to address the alleged offender directly. The MRCOG understands that an individual may be uncomfortable in handling the situation alone. If so, assistance through the MRCOG is available and will be provided to any employee.

Any employee who believe he/she has experienced conduct that he/she believes is contrary to this MRCOG policy or who has concerns about such matters is strongly urged to file his/her complaint with the MRCOG's Human Resources Manager unless the Human Resources Manager is alleged to be the source of such discrimination, harassment or retaliation or has allowed or condoned the alleged discrimination, harassment or retaliation. In that case, the employee is authorized to file his/her complaint with any supervisor or the Executive Director.

In addition to the complaint procedures set forth in this policy, any employee has a right to file a complaint for sexual harassment or other employment discrimination or retaliation with the New Mexico Human Rights Bureau, Department of Workforce Solutions, 1596 Pacheco Street, Suite 103, 87505, (505) 827-6838 and the Equal Employment Opportunity Commission (EEOC), 505 Marquette NW, Suite 900 Albuquerque, New Mexico 87102, 1-800-669-4000. A complaint of discrimination, harassment or retaliation must be filed with these agencies within a certain period of time after the alleged occurrence to be timely. The employee may contact these agencies for further information.

### **9.5.2 The Investigation**

Any reported allegations of harassment, discrimination or retaliation shall be investigated promptly. The investigation will include interviews with the parties involved, and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge.

Complaints of harassment, discrimination and retaliation will be investigated in an impartial manner. The investigation will also be conducted in as confidential a manner as possible. Employees are required to fully cooperate in any investigation. Employees are also required to answer all questions truthfully. Failure to fully cooperate and/or honestly answer questions may result in discipline, up to and including termination. The investigation and findings will be completed in a timely manner, communicated to the parties involved, and prompt corrective action shall be taken, if necessary.

### **9.6 Responsibilities of Supervisory and Administrative Personnel**

Each supervisor, manager and other administrative official has a responsibility to keep the work place free from any form of unlawful discrimination, harassment and retaliation. No supervisor, manager or administrative official is to threaten or insinuate, either explicitly or implicitly, that an employee's refusal or willingness to submit to sexual advances will affect the employee's terms or conditions of employment.

Any supervisor, manager or administrative official who receives a complaint alleging the violation of this policy or who otherwise becomes aware of a potential violation of this policy is required to report the matter to the Human Resources Manager unless the Human Resources Manager is the subject of the Complaint. If the Human Resources Manager is the subject of the complaint, the supervisor shall report the matter directly to the Executive Director.

### **9.7 False Complaints Filed in Bad Faith**

An employee who files a false complaint in bad faith is subject to discipline, up to and including termination. However, in no event shall this finding be made without first providing the complainant the opportunity to respond to the allegation of bad faith.

### **9.8 Disciplinary Action**

Any employee, supervisor, manager or other administrative official who is found to have violated these policies will be subject to prompt and appropriate discipline, up to and including termination.

## **SECTION 10. DRUG AND ALCOHOL POLICY/ DRUG FREE WORKPLACE POLICY**

***Employees who serve in a safety sensitive positions will comply with the requirements of Title 49, Code of Federal Regulations Part 219 with respect to submission and approval of random alcohol and drug testing.***

### **10.1 Policy Statement**

The MRCOG is committed to providing its employees with a safe workplace and an atmosphere that allows them to protect property placed in their care. MRCOG employees should not be subject to any safety threats from fellow workers. Employees are expected to be in suitable mental and physical condition while at work, allowing the employee and co-workers to perform their jobs safely and effectively.

Whenever the use, abuse, purchase, possession or sale of any mood altering substance (such as alcohol or other drugs) interferes with a safe workplace, appropriate action will be taken. Both on-the-job and off-the-job involvement with any mood altering substance can have a negative impact on the workplace and on the MRCOG's ability to achieve carry out its mission in a safe and secure environment. Therefore, employees are

expected to report to the workplace with no mood altering substances in their systems. The possession, purchase, sale or use of mood altering substances at the workplace, or coming to work under the influence of such substances shall be a violation of safe work practices and will subject the employee to disciplinary action, including possible dismissal.

Questions concerning this policy may be directed to the Human Resources Manager.

## **10.2 Prohibitions**

The MRCOG is committed to providing a safe, healthy, and efficient working environment for all employees. To help achieve this goal, employees are prohibited from:

- 10.2.1** Using, possessing, distributing, selling, transferring or being under the influence of any illegal drug on MRCOG premises, while on MRCOG time (including during lunch periods or rest breaks), while on-call or while on MRCOG business which includes, but is not limited to, driving vehicles or operating MRCOG equipment;
- 10.2.2** Bringing alcohol onto MRCOG premises, consuming alcoholic beverages or being under the influence of alcohol while on MRCOG premises, in MRCOG vehicles, or while on MRCOG business or time (including during lunch periods or rest breaks), while on-call or while on MRCOG business which includes, but is not limited to, driving vehicles or operating MRCOG equipment;
- 10.2.3** Any consumption of alcohol within a four (4) hour period immediately preceding the time at which the employee reports to duty;
- 10.2.4** No safety sensitive employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.
- 10.2.5** Abusing prescription drugs or using prescription drugs that have not been prescribed for the employee by a physician is prohibited. Employees may use prescription drugs only upon the direction of their physician or other licensed healthcare provider with prescriptive privileges. Nonprescription drugs should be used in accordance with the recommended dosage. Employees using prescription drugs according to a physician's instructions or using over-the-counter drugs for medicinal purposes shall, in the event such drugs may impair their physical, mental, emotional, or other faculties, notify their supervisor and the Human Resources Manager prior to the start of the employee's work day or shift. In this instance, the employee is required to provide proof of lawful prescription and/or a statement from the employee's physician indicating whether the employee is able to safely and competently perform his/her essential job functions while taking the prescribed drug(s).

### **10.3 Education and Training**

**10.3.1** The MRCOG shall provide this policy to every MRCOG employee. The MRCOG shall make training and education programs available to employees.

**10.3.2** The MRCOG will provide supervisors with a minimum of 60 minutes of drug and alcohol specialized training designed to promote the necessary skills to:

**10.3.2.1** Inform employees of this policy;

**10.3.2.2** Enforce this policy;

**10.3.2.3** Identify the signs of drug and/or alcohol use;

**10.3.2.4** Intervene constructively; and

**10.3.2.5** Integrate an employee effectively back into his/her work group following intervention and/or treatment.

**10.3.3** Non-supervisory employees will receive a minimum of 60 minutes training on the effects and consequences of prohibited drug and/or alcohol use on personal health, safety, the work environment and continued employment.

### **10.4 Notification to Supervisor**

It is the employee's responsibility to notify his or her immediate supervisor in writing of any drug or alcohol related arrest, indictment, plea and conviction immediately. It is also the employee's responsibility to advise his or her immediate supervisor in writing immediately upon notice of the suspension or revocation of the employee's driver's license.

### **10.5 Violation of Policy**

Violation of the provisions in this Section shall be grounds for denial, suspension or revocation of any MRCOG-issued permit to operate a motor vehicle and is considered just cause for disciplinary action, up to and including termination.

### **10.6 Employee Assistance**

Employees who are concerned about possible alcoholism or addiction to drugs are strongly encouraged to seek diagnosis and, where indicated, to accept and complete a course of treatment. Information regarding the dangers of drug and alcohol abuse and available assistance programs may be obtained from the Human Resources Manager.

### **10.7 Participation in Substance Abuse Program**

The MRCOG may require an employee to participate satisfactorily in a substance abuse assistance or rehabilitation program at the employee's or his/her insurance carrier's expense. The program for such purposes is to be approved by a federal, state, or local health, law enforcement or other appropriate agency. When the employee begins the

program, he/she will be required to sign a release form with the program representative for the purpose of releasing minimal information to the MRCOG, such as attendance and/or completion of the program.

### **10.8 *Drug and Alcohol Testing Policy***

This policy is intended to provide a safe work place in addition to ensuring that only alert employees are permitted to engage in work for the MRCOG. This policy establishes guidelines for consistent handling of alcohol and drug usage situations throughout the MRCOG. Urine and breath testing will be utilized as they are an effective means of identifying those employees who are using illegal drugs or abusing legal drugs or alcohol.

### **10.9 *Applicability***

**10.9.1** All MRCOG employees are subject to reasonable suspicion drug/alcohol testing. MRCOG employees are not subject to pre-employment drug testing or random drug testing unless otherwise specifically provided in this policy.

**10.9.2** Applicants for employment in safety-sensitive positions are subject to pre-employment drug testing. Employees in safety-sensitive positions are subject to random, return-to-duty, follow-up, and post-accident drug/alcohol testing. Employees who are placed, transferred, or promoted to safety-sensitive positions are subject to drug/alcohol testing prior to being transferred or promoted. It shall be the responsibility of the Executive Director to determine which positions are safety-sensitive and to notify the affected employees of their status upon hiring, transfer and promotion.

**10.9.3** All employees required to hold a Commercial Driver's License (CDL) and who perform safety sensitive functions are subject to pre-employment, random, return-to-duty, follow-up, post-accident, and license renewal drug/alcohol testing as provided by the Drug-Free Workplace Act of 1988 and the Omnibus Transportation Employee Testing Act of 1991. A safety sensitive function is any duty related to the safe operation of a commercial vehicle including the following activities:

**10.9.3.1** All drive time;

**10.9.3.2** All times a CDL driver is waiting to be dispatched, including "on-call" status;

**10.9.3.3** All time being in or upon any commercial vehicle, except time spent in a sleeping berth;

**10.9.3.4** Loading or unloading, supervising or assisting in loading or unloading, remaining in readiness to operate a commercial vehicle, giving or receiving receipts for a shipment being loaded or unloaded;

**10.9.3.5** Obtaining assistance or attending a disabled vehicle.

## 10.10 Definitions

*Alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl contained in any beverage, mixture, preparation, or medication.

*Medical Review Officer* means a licensed physician (medical doctor or doctor of osteopathy) selected by the MRCOG who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result, together with the employee's medical history and any other relevant bio-medical information.

*Prohibited Drug* means marijuana (THC), cocaine and metabolites, opiates, amphetamines, or phenclidine (PCP) and any others identified by the Federal Transit Administration.

*Refuse to submit* (to a drug/alcohol test) means that an employee fails to provide an adequate breath or urine sample without a valid medical explanation, after he or she has received notice of the requirement to be tested in accordance with this policy, refuses to sign necessary consent forms, provides a specimen with a temperature out of range without a valid medical explanation, or engages in conduct that clearly obstructs the testing process including failure to arrive at the collection site at all or in a timely manner.

*Negative test for alcohol* means a test result of less than 0.02 concentration of alcohol.

*Negative test for controlled substances (prohibited drugs)* means a test result that does not indicate the presence of prohibited drugs or their metabolites.

*Positive test for alcohol* means a test result of 0.02 or greater concentration of alcohol.

*Positive test for controlled substances (prohibited drugs)* means a drug test result indicating the presence of prohibited drugs or their metabolites.

## 10.11 Pre-Employment Testing

**10.11.1** All offers of employment for safety-sensitive positions shall be extended conditionally upon the applicant passing a drug test. An applicant shall not be hired into a safety sensitive position unless the applicant takes a drug test with a verified negative result.

**10.11.2** If an applicant for a safety-sensitive position fails a pre-employment drug test, the conditional offer of employment shall be rescinded.

**10.11.3** A non-safety-sensitive employee shall not be placed, transferred or promoted in to a safety-sensitive position until the employee takes a drug test with a verified negative result. When such an employee submits a drug test with a



verified positive result, the employee shall be subject to disciplinary action, up to and including termination.

### **10.12 Reasonable Suspicion Testing**

**10.12.1** An employee of the MRCOG shall be required to undergo a drug/alcohol test if there is reasonable suspicion of the employee drug or alcohol use, purchase, possession, transfer or sale of drugs or alcohol.

**10.12.2** Reasonable suspicion shall mean that there is objective evidence, based upon known specific, contemporaneous, articulable observations which include, but are not limited to, the employee's appearance, behavior, speech or body odor that would lead a reasonable person to believe that the employee:

**10.12.2.1** Is under the influence of alcohol or drugs while on duty; or

**10.12.2.2** Is in possession of, or using, transferring, selling or purchasing alcohol or drugs during work hours including, while on lunch or break, while on MRCOG property or in a MRCOG vehicle.

**10.12.2.3** An employee's admission of alcohol abuse or prohibited drug use to a supervisor in his/her chain of command, and EAP counselor or a provider of medical services under contract with the MRCOG shall constitute reasonable suspicion when the use or abuse could impair job performance and/or safety, and the employee is not already a participant in a drug/alcohol treatment program.

**10.12.3** Any trained supervisory level employee may make the reasonable suspicion determination. The supervisor shall be responsible for transporting the employee to the testing site. Supervisors are to avoid placing themselves or others into situations that might endanger the physical safety of those present. The impacted employee shall be placed on leave with pay status in accordance with these policies until tests results are available and an administrative review has been conducted. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his/her shift and shall immediately be placed on leave with pay status pending the final outcome of the disciplinary process in accordance with these policies. The supervisor will assist or make arrangements for the employee to get home safely after the drug and/or alcohol test.

**10.12.4** A written record of the observations which support the drug/alcohol test based on reasonable suspicion shall be prepared and signed by the observer(s) within eight (8) hours or prior to the release of test results, whichever is earlier. This written record shall be submitted to the Human Resources Manager and shall be attached to the forms reporting the test results.

### **10.13 Post-Accident Testing**

**10.13.1** As soon as practicable following an accident, the appropriate supervisor or designee shall cause the drug/alcohol testing of any safety-sensitive employee whose performance could have contributed to the accident using the best information available at the time of the decision. The employee shall be placed on administrative leave with pay until the test result is available.

**10.13.2** If, during the course of the accident investigation, the supervisor or designee has reasonable suspicion any employee may be under the influence of alcohol or drugs, the supervisor will ensure that a reasonable suspicion drug and alcohol test is conducted. The employee shall be placed on administrative leave with pay until the test result is available.

**10.13.3** The appropriate supervisor shall ensure that an employee required to be tested under this section is tested as soon as practicable and within 8 hours of the accident. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his/her location if he or she leave the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

**10.13.3.1** Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

**10.13.3.2** In the rare event the MRCOG is unable to perform its own approved drug and alcohol test (i.e., the employee is unconscious or is detained by a law enforcement agency), the MRCOG may use drug and alcohol post accident test results administered by state or local law enforcement officials in lieu of an MRCOG approved test. The state or local law enforcement officials must have independent authority for the test and the MRCOG must obtain the results in conformance with state and local law.

**10.13.4** An employee who submits a sample for a post-accident test which is determined to be a verified positive test result will be discharged from MRCOG employment.

### **10.14 Random Testing**

**10.14.1** Safety-sensitive employees are subject to random selection for drug/alcohol testing with no more than two (2) hours notice.

**10.14.2** The selection of employees shall be made by a scientifically valid method randomly generating an employee identifier from the appropriate pool of safety sensitive

employees.

**10.14.2.1** The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the year; and

**10.14.2.2** The number of safety sensitive employees randomly selected for drug/alcohol testing during the calendar year shall be in accordance with applicable federal law.

**10.14.3** Each safety-sensitive employee shall be in a pool from which random selection is made. Each safety-sensitive employee in the pool shall have an equal chance of selection and shall remain in the pool, whether or not the employee has been previously tested.

### **10.15 *Result of Drug/Alcohol Test***

**10.15.1** All test results shall be reported to the Medical Review Officer. If the test results are negative, the Medical Review Officer will notify the appropriate parties to that effect.

**10.15.2** If the laboratory reports that the result of a drug or alcohol test is positive, the MRCOG's Medical Review Officer shall consult with the impacted employee and determine the validity of the results. If the Medical Review Officer finds a valid medical explanation (i.e., prescription drugs) for the positive result, the Medical Review Officer will verify and report this test as negative and no action will be taken. If the Medical Review Officer's assessment is to verify the positive test, copies of the testing records shall be provided to the Human Resources Manager.

**10.15.3** A positive drug or alcohol test is just cause for discipline, up to and including termination.

**10.15.3.1** Refusal to submit to a drug/alcohol test shall be considered both a positive test result and a direct act of insubordination and shall result in termination.

**10.15.3.2** For safety sensitive employees, the first instance of a verified positive test from a sample submitted for a random or reasonable suspicion drug/alcohol test shall result in discharge from MRCOG employment.

**10.15.3.3** Unless he/she has a prior record, a non-safety sensitive employee's first instance of a positive test from a sample submitted as the result of a reasonable suspicion drug/alcohol test will, at a minimum, result in the following:

- A. A twenty (20) day work suspension without pay;
- B. Mandatory referral by the MRCOG for assessment, formulation of a treatment plan and execution of a return-to-work agreement;
- C. The cost and fees associated with the employee's assessment, counseling and rehabilitation shall be paid by the employee or his/her insurance plan;
- D. The employee's consent to a return-to-work agreement which shall provide that the employee's failure to remain compliant with terms of the agreement shall result in termination from MRCOG employment. Compliance with the return-to-work agreement shall mean that the employee has submitted to a drug/alcohol test immediately prior to returning to work and the result of the test is negative; in the judgment of the treatment provider the employee is cooperating with the recommended treatment program; and the employee has agreed to periodic unannounced follow-up testing for a period of at least 12 months and not more than 24 months. A minimum of 6 tests within the first 12 months is required. Refusal to submit to a periodic unannounced follow-up drug/alcohol test or submitting to a follow-up test the result of which is positive shall result in termination from MRCOG employment.

**10.15.3.4**

A non-safety sensitive employee who, for the first time, tests positive based on a sample submitted as the result of a reasonable suspicion drug/alcohol test may be terminated from MRCOG employment if the employee has one or more of the following in his/her employment record:

- A. A total of 6 days of suspension in the preceding 2 years;
- B. In the preceding year has been notified in writing that he/she has over utilized sick leave; or
- C. In the preceding year has received a suspension without pay for tardiness or absenteeism.

**10.15.3.5**

A non-safety sensitive employee's second instance of a positive result from a sample submitted under the reasonable suspicion drug/alcohol test provisions herein shall result in termination from MRCOG employment.

### **10.16 *Grievance and Appeal***

**10.16.1** An employee who is subject to termination or other disciplinary action pursuant to this Drug and Alcohol Policy may grieve the termination or other disciplinary action pursuant to the appeal policies set forth in this manual.

**10.16.2** In the case of a verified positive test, the employee may request at his/her own expense the testing of the collected sample within 14 calendar days of notice that the first test was positive. Upon receipt of such a request, the Medical Review Officer will notify the testing lab and the lab will forward the reserve sample to another National Institute on Drug Abuse (NIDA) certified lab by a secure method. The employee will be required to pay for the cost of the test in advance. However, if the result of this test is negative, the MRCOG will reimburse the employee.

**10.16.3** An employee who has reason to believe he/she was improperly designated as a safety-sensitive employee subject to random drug/alcohol testing shall appeal his/her safety-sensitive designation within 30 calendar days of notification that his/her position has been designated as safety sensitive.

### **10.17 *Confidentiality and Records Release***

**10.17.1** All information relating to drug and/or alcohol screens is to be kept strictly confidential. Drug/alcohol testing records shall be maintained in the employee's medical file which will be maintained separately from the employee's personnel file. These medical files will be kept in a locked and secured cabinet. Except as provided below or as required by law, the results of any drug/alcohol test shall not be disclosed without express written consent from the tested employee.

**10.17.2** Records of verified positive drug/alcohol test results shall be released to the employee's supervisor and treatment provider.

**10.17.3** Records of an employee's drug/alcohol test(s) shall be released to the adjudicator in a grievance, lawsuit or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test.

**10.17.4** If appropriate, records will be released to the National Transportation Safety Board or State agency with appropriate regulatory authority over the MRCOG or any of its employees.

### **10.18 *Drug Testing Procedures***

**10.18.1** All drug/alcohol testing shall be conducted in such a manner as to assure a high degree of accuracy and reliability. All laboratory tests will be performed by a NIDA certified laboratory, selected by the MRCOG and equipped and trained to perform such tests. Urine samples will be taken by qualified personnel at the designated physician's office, emergency room or laboratory. All MRCOG drug/alcohol testing will be conducted

using techniques, equipment, and laboratory facilities consistent with the procedures set forth in 49 CFR Part 40, as amended.

**10.18.2** The laboratory will be instructed as follows:

**10.18.2.1** To test for the substances set forth in the definition section of this policy.

**10.18.2.2** To retest positive urine specimens for the substance indicated using an alternative scientific method such as the use of gas chromatography/mass spectrometry (GC/MS) analysis.

**10.18.2.3** To freeze all specimens yielding positive results.

**10.18.2.4** To utilize chain-of-custody procedures which ensure proper identification, labeling and handling of test samples.

**10.18.2.5** To have a certified breath alcohol technician conduct alcohol testing using a reliable breath-testing device.

**10.18.2.6** To deliver the lab report and any printouts showing positive results to the Medical Review Officer for verification.

**10.18.3** The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee's privacy, the integrity of the drug testing procedure, and the validity of the test result.

### **10.19 *Proper Application of the Policy***

The MRCOG is dedicated to assuring fair and equitable application of this policy. Therefore, supervisory/administrative officials are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisory/administrative official who knowingly disregards the requirements of this policy or who is found to have deliberately misused the policy in regard to subordinates shall be subject to disciplinary action, up to and including termination.

## **SECTION 11. USE OF MRCOG VEHICLES/TAKE HOME VEHICLES**

### **11.1 *MRCOG Vehicles Defined***

MRCOG vehicles are defined as any motor vehicle owned, leased or rented by the MRCOG.

### **11.2 *Driving Privilege***

Driving a MRCOG vehicle is a privilege, not a right. The MRCOG reserves the right to suspend or revoke any employee's privilege of driving a MRCOG vehicle.

### **11.3 Daily-Use Vehicles**

**11.3.1** The MRCOG maintains several vehicles for daily use. These vehicles can be used by multiple qualified employees on an as-needed basis. Daily-use vehicles are provided for official MRCOG business only and are to be driven only by MRCOG employees in the performance of their duties. Official MRCOG business does not include commuting to and from a work-site before and after work hours. Personal use of a daily-use vehicle is strictly prohibited. Any other use required prior approval by the Executive Director.

**11.3.2** An employee must check out a daily-use vehicle, documenting the following:

**11.3.2.1** Description or identification number for vehicle being checked out;

**11.3.2.2** Driver's name;

**11.3.2.3** Date;

**11.3.2.4** Reason vehicle is needed and destination;

**11.3.2.5** Starting mileage; and

**11.3.2.6** Ending mileage.

**11.3.3** A daily-use vehicle is to be returned immediately after use and securely parked.

### **11.4 Requirements for Take-Home Vehicles**

The MRCOG provides take-home vehicles to select employees, including but not limited to, the Executive Director, Rio Metro Maintenance employees, operations manager, supervisors and the quality assurance manager. Each qualified employee eligible for or requesting a take-home vehicle must complete a Take-Home Vehicle Authorization Form. The form must be approved and signed by the Executive Director.

No later than January 15 of each year, the Executive Director will determine, in writing, whether there is continued justification for each take-home vehicle or, instead, one or more take-home vehicles should become daily-use vehicles.

Employees who operate a take-home vehicle are subject to this policy though they may not be on official business while commuting.

### **11.5 Driver Qualifications**

**11.5.1** To be eligible to drive a MRCOG vehicle, an individual must:

**11.5.1.1** Be a MRCOG employee;

**11.5.1.2** Be at least 18 years of age or older;

**11.5.1.3** Have at least 2 continuous years of driving experience;

- 11.5.1.4** Have a valid, unexpired New Mexico driver's license of the appropriate classification and with the necessary endorsements for the vehicle(s) to be driven;
- 11.5.1.5** Have an acceptable driving record which means the employee:
- A.** Has no revocation of the New Mexico Driver License or any other government issued driver's license within the immediate previous 3 years on record;
  - B.** Has no current driver license restriction requiring an ignition interlock device;
  - C.** Has no pending charges for vehicular homicide or serious bodily injury by vehicle, driving while under the Influence of alcohol or drugs, or reckless driving or comparable charges issued by the State of New Mexico or any law enforcement agency either within or outside the State of New Mexico,
  - D.** Is unimpaired by alcohol or other drugs;
  - E.** Complies with any and all driver safety requirements established by the MRCOG from time to time;
  - F.** Possesses a valid State of New Mexico medical waiver as required by statute for any medical condition that could impair a person's ability to drive safely.
  - G.** Employee must obtain a City of Albuquerque Operators Permit prior to using any MRCOG vehicle. Classes are scheduled through the Human Resources Manager.

**11.5.2** The MRCOG reserves the right to make its determination regarding an acceptable driving record by reference to records maintained by the Motor Vehicle Division of the New Mexico Department of Taxation and Revenue (MVD) regarding citations and convictions of drivers licensed in the state of New Mexico, the records of the MRCOG and the records of any other applicable government entities. The records of such agencies are not subject to appeal or dispute except as provided herein, i.e., if an employee is going to be demoted or terminated because his/her drivers license has been suspended or revoked.

**11.5.3** The MRCOG must document an employee's eligibility prior to authorizing an employee to drive a MRCOG vehicle.

**11.5.4** The MRCOG shall implement a procedure and schedule for the review of the driving records for all employees authorized to drive MRCOG vehicles. MVD driving records shall be checked at least quarterly.

## **11.6 *Permitted Passengers***

Passengers are limited to MRCOG directors, employees, contractors, volunteers and



invited guests engaged in MRCOG related activities. Nothing in this section prohibits the use or occupancy of a MRCOG vehicle when rendering emergency aid or assistance to any person, or the use or occupancy by a private sector mechanic or repair personnel in the course of performing required maintenance or repairs.

### **11.7 Refueling**

The individual using a MRCOG vehicle is responsible for refueling as needed and must utilize a City of Albuquerque fueling facility, if feasible. If outside Albuquerque, the individual may use a gas card to refuel a MRCOG vehicle at a commercial gas station or an authorized fueling facility.

### **11.8 Vehicle Maintenance**

The MRCOG is responsible for the cost of maintenance for MRCOG vehicles. Supervisors shall advise employees whether they will be responsible for scheduling the maintenance for a particular vehicle. Generally, all Rio Metro employees are responsible for scheduling maintenance for their vehicles. Maintenance for MRCOG vehicles is generally coordinated by front office staff. An employee to whom a MRCOG take-home vehicle has been assigned is responsible for alerting the MRCOG when scheduled maintenance is due. Maintenance of traffic count vehicles are scheduled by Program staff.

A driver shall immediately take steps to report any mechanical or operating problem that occurs while driving a MRCOG vehicle. A driver shall not continue to operate a MRCOG vehicle if continued operation could endanger any person or property.

The MRCOG will retain vehicle service and maintenance records.

### **11.9 Traffic Laws and Requirements**

**11.9.1** An employee who drives a MRCOG vehicle is required to observe all City and State traffic laws and is personally responsible for the payment of any citations or fines. Failure to pay such tickets or fines within the allowed time may result in disciplinary action, up to and including termination.

**11.9.2** An employee must immediately report to his/her supervisor the revocation, suspension or loss of his/her New Mexico driver's license or the receipt of any on or off-duty citation or arrest for vehicular homicide or serious bodily injury by vehicle, driving while under the influence of alcohol or drugs, reckless driving or other traffic violation.

**11.9.3** Auto liability insurance is provided for employees operating a MRCOG vehicle on official business. However, to the extent permitted by law, the MRCOG reserves the right to recover from an employee the amount expended to provide the defense and/or pay a settlement or final judgment if the employee was acting outside the course and scope of his/her employment and/or fraudulently or with intentional malice caused bodily injury, wrongful death, or property damage.

**11.9.4** No employee shall abuse or misuse a MRCOG vehicle. Employees are

responsible for the safe and careful operation of MRCOG vehicles.

**11.9.5** Employees must immediately report to their supervisor any damage, defect or mechanical problem. An employee shall not drive a vehicle with a known mechanical problem.

**11.9.6** Employees are strictly prohibited from talking on the phone without a hands-free device, texting, e-mailing, tweeting or the like while driving a MRCOG vehicle.

**11.9.7** Employees are required to immediately report to their supervisor information regarding any medical or other condition affecting their ability to drive safely.

### **11.10 *Accident Reporting***

**11.10.1** For purposes of this section, an accident is any collision of a MRCOG vehicle that involves another vehicle, stationary object, or person that results in property damage or injury, including accidents involving the failure to secure a parked vehicle or parking a vehicle in an unsafe manner.

**11.10.2** If a MRCOG vehicle is involved in an accident, the driver must immediately call a supervisor and the police department to the scene. The supervisor will, in turn, immediately notify the Executive Director.

**11.10.3** The driver shall not leave the scene until police have completed their investigation. If the police do not investigate at the scene, the driver should make a report at the police station or as directed by his/her supervisor.

**11.10.4** MRCOG employees must also cooperate with the MRCOG and law enforcement agencies in the investigation of any vehicular accident in which the employee is involved or is a witness.

**11.10.5** Nothing in this subsection shall prevent an employee from obtaining necessary medical care.

### **11.11 *Supervisor Responsibilities***

Supervisory Personnel shall:

**11.11.1** Assure that only qualified and authorized individuals are allowed to operate MRCOG vehicles on official business.

**11.11.2** Require that they and their subordinates who drive MRCOG vehicles are familiar with this policy and comply with this policy.

**11.11.3** Strictly prohibit any use of MRCOG vehicles for personal business

**11.11.4** Require that MRCOG vehicles are adequately maintained and inspected for safe operation and that unsafe vehicles are removed from service.

**11.11.5** Hold drivers accountable for unsafe driving practices and assure driver safety by not allowing a driver to drive if the driver may present a danger to him/herself, passengers or the public.

**11.11.6** Periodically ride with or observe the driving of the drivers under their respective supervision to assure an understanding of and compliance with this policy, operating instructions and traffic laws.

**11.11.7** Upon the receipt of an accident report, a report of a driver's license suspension, revocation or citation or other evidence of driver unfitness, determine if, in the interests of safety, the individual's driving privileges should be suspended or revoked or whether the individual retain his driving privileges while an incident is pending investigation or while charges are resolved.

**11.11.8** Require the timely and accurate completion of vehicle logs, fuel logs and any other documentation required by the MRCOG.

**11.11.9** Monitor fuel usage and charges and investigate any irregularities.

**11.11.10** Upon notification of a vehicle accident, travel to the scene to assess the situation.

### **11.12 *Denial, Revocation or Suspension of Driving Privileges***

The Executive Director may deny an employee's MRCOG driving privileges for failure to meet the requirements set forth in this policy. The Executive Director may also revoke or suspend an employee's MRCOG driving privileges if the employee has violated any of the provisions contained in this policy, for budgetary reasons, or other reason determined to be in the MRCOG's interest.

### **11.13 *Failure to Comply with this Policy***

In addition to the suspension or revocation of driving privileges, the violation of this policy may result in disciplinary action, up to and including termination.

## **SECTION 12. LEGAL HOLIDAYS**

**12.1** The Executive Director shall announce annually the legal holidays for MRCOG employees. In order to qualify for holiday pay, the employee must work or be on approved paid leave the scheduled workday immediately before and after the holiday. If a holiday occurs during your scheduled vacation, it will not be counted against your vacation accrual. Employees are not eligible to receive holiday pay when they are on an unpaid leave of absence.

**12.2** If a designated legal holiday falls on a Saturday or Sunday, the day off will be the preceding Friday, or following Monday respectively.

**12.3** Employees who work less than 40 hours per week will receive holiday pay prorated to a 40-hour week.

**12.4** If an exempt employee, or a part-time employee who does not work 5 days per week, is required to work on a legal holiday, the employee is entitled to an alternate day off. The alternate day must be approved at least 24 hours in advance of the time it is taken.

**12.5** Non-exempt employees who are required to work a legal holiday will be compensated holiday pay and time and one-half for actual hours worked.

### **SECTION 13. VACATION LEAVE**

**13.1** Vacation leave will accrue on a biweekly basis from the date of current employment. The MRCOG will compensate any employee separating from the MRCOG for accrued vacation leave up to the point of separation date, provided the employee gives 2 weeks' notice of his/her resignation.

**13.2** Vacation leave will accrue as follows for an 80-hour work period:

<u>Continuous Service</u>	<u>Biweekly Accrual</u>	<u>Annual Accrual</u>
0 to 4 years	3.85 hours	100 hours
5 to 9 years	4.62 hours	120 hours
10 to 14 years	5.54 hours	144 hours
15 years and more	6.93 hours	180 hours

Employees working less than an 80-hour pay period will accrue vacation leave on a prorated basis.

**13.3** Every effort will be made to grant an employee vacation at the time requested, However, vacations cannot significantly interfere with the MRCOG's operation and therefore must be approved by the employee's supervisor or designee well in advance. Vacation requests are submitted and approved in the timekeeping system. If any conflicts arise in requests for vacation time, preference will be given to the employee with the most seniority. Vacation leave may be taken in half or full hour increments.

**13.4** Vacation leave will not be granted before it accrues.

**13.5** The MRCOG strongly believes it is important for employees to use accrued vacation time to rest, relax, and rejuvenate. Therefore, vacation leave will accrue through December 31 each year and the excess of 52 biweekly accruals will be dropped from the record at the end of the pay period containing December 31, unless the employee is on military leave, in early retirement, or has an effective retirement date of January 1 of the following year.

**13.6** Upon the death of a MRCOG employee, the MRCOG will pay cash for the employee's accrued vacation leave to the designated beneficiary as identified in the City of Albuquerque life insurance policy. The employee, at time of death, must have been in an employment status that authorizes the accrual of vacation leave benefits.

**13.7** In the event of dissolution of the MRCOG or layoff due to any major organization or program changes, any and all affected employees will be compensated for all accrued, unused vacation leave as of the established date of termination.

## **SECTION 14. SICK LEAVE**

**14.1** MRCOG employees working a 40-hour workweek accrue sick leave at the rate of 3.70 hours biweekly. Employees working less than 40 hours per week accrue leave on a prorated basis. Sick leave may not be used before it is accrued. Sick leave may be taken in half or full hour increments.

**14.2** Sick leave may be granted for absence from duty because of personal illness or illness of a spouse, domestic partner, son, daughter, parents, siblings, or grandparents. "Personal illness" includes doctor's appointments for examination, evaluation or treatment. Accrued sick leave also may be used for a maximum of 3 days in case of serious illness or death in the immediate family of the employee or the employee's spouse or domestic partner. A MRCOG employee must satisfy the requirements of the City of Albuquerque domestic partner policy to use sick leave for reasons related to a domestic partner. A maximum of 3 days of accrued sick leave may be used in cases of extreme and unusual hardships of an emergency nature.

**14.3** An employee must submit a request for approval of sick leave to the supervisor, Executive Director or designee in the time keeping system as soon as possible. If an employee is absent from duty before requesting and receiving approval for the absence, the employee should notify the immediate supervisor by telephone within 1 hour of the scheduled starting period to explain the circumstances of their absence. Employees in safety sensitive positions should give supervisors a minimum of 4 hours notice to ensure coverage. The employee must complete the request as soon as possible. When an employee is absent from work for 5 or more days, and such absence is chargeable to sick leave, he or she may be asked to provide his or her supervisor with a doctor's statement certifying that the absence from work was due to illness.

**14.4** Employees who have more than 500 hours of accrued sick leave may choose to convert sick leave annually in November, or upon resignation, based on the following schedule:

**14.4.1** Accrued sick leave over 500 hours may be converted at a ratio of 3 hours of sick leave to 1 hour of vacation leave or cash.

**14.4.2** Accrued sick leave over 850 hours may be converted at a ratio of 2 hours of sick leave to 1 hour of vacation leave or cash.

**14.4.3** Accrued sick leave in over 1,200 hours will be converted at 3 hours of sick leave to 2 hours of vacation leave or cash, at the end of each calendar year. Employees may not carry over more than 1200 hours of sick leave.

**14.5** Upon the death of a MRCOG employee, the MRCOG will pay cash for the employee's accrued sick leave according to the schedule in this Section to the beneficiary designated in the City's life insurance policy. The employee, at time of death, must have been in an employment status that authorizes the accrual of sick leave benefits.

**14.6** In the event of dissolution of the MRCOG all or any affected employees will be compensated for all accrued, unused sick leave as of the established date of termination in accordance with the schedule set forth in this Section.

## **SECTION 15. DONATION OF SICK AND VACATION LEAVE**

Donated sick or vacation leave assists MRCOG employees with a minimum of 1 year continuous service who have exhausted all accrued leave and who have no other paid leave options available. Donated leave may be granted only in the event of a life threatening illness or injury to the employee, the employee's spouse, domestic partner, child or parent. A MRCOG employee must satisfy the requirements of the City of Albuquerque domestic partner policy to receive donated leave for reasons related to a domestic partner. Only an employee whose supervisor certifies exceptional performance is eligible to request leave donations under this program.

### **15.1 *Eligibility for Donated Leave***

To be eligible to request donated leave, an employee must meet the following criteria:

- 15.1.1** Have a minimum of 1 year of continuous service;
- 15.1.2** Have exhausted all accrued leave and have no other paid leave options available;
- 15.1.3** Have a life threatening illness or injury, or have a spouse, domestic partner, child or parent with a life threatening illness or injury;
- 15.1.4** Have demonstrated exceptional performance; and
- 15.1.5** Have not received donated leave, injury time or hardship leave in the 12 months preceding the request.

### **15.2 *Procedure for Donated Leave***

**15.2.1** An eligible employee, or the Human Resources Manager on their behalf, may request a donation of leave by submitting an application to the Executive Director that includes the following:

- 15.2.1.1 The employee's name, social security number and rate of pay;
- 15.2.1.2 A description of the life threatening illness which has prompted the request, to include a medical statement including the diagnosis, prognosis, required treatment and anticipated return to work date; and
- 15.2.1.3 The anticipated amount of donated leave the recipient will require.

15.2.2 The Human Resources Manager will determine whether the requesting employee meets the eligibility criteria. If the Executive Director approves the request, the Human Resources Manager will disseminate the request to MRCOG employees.

### 15.3 *Conditions of Donated Leave*

- 15.3.1 Donated leave will be converted to a dollar value based on the donor's hourly rate and then converted to hours based on the recipient's hourly rate.
- 15.3.2 Donated leave may be requested by or for an employee only one time during a 12-month period.
- 15.3.3 The leave recipient will not accrue vacation or sick leave while on donated leave status.
- 15.3.4 Once an employee returns to work from donated leave, either full-time or part-time, all remaining donated hours will be reinstated to the donating employee(s).
- 15.3.5 Provisions regarding the confidentiality of medical records and information shall govern. Posted solicitation for donated leave will ensure the privacy of medical information. Disclosure of such information may be made only with the express written consent of the affected employee.
- 15.3.6 Donated leave will not be granted as an extension of injury time, hardship leave or leave without pay of more than 2 weeks.
- 15.3.7 Donation of sick/vacation leave is strictly voluntary. Denial of a request to receive donated leave is not grievable.

## SECTION 16. FAMILY AND MEDICAL LEAVE

### 16.1 *General*

This Section is based on the provisions of the federal Family and Medical Leave Act (FMLA) and will be administered consistent with that law, federal regulations and the definitions included in this section.

In compliance with the FMLA, the MRCOG provides eligible employees up to twelve (12) work weeks of unpaid, job-protected leave within any twelve (12) month period because of (1) the birth of a child and to care for the newborn child during the first year following birth; (2) the placement of a child with the employee for adoption or foster care during the first year following placement; (3) the employee's need to care for a child, spouse, or parent with a serious health condition; or (4) the employee's inability to work because of a serious health condition.

The MRCOG may require documentation of any family relationship on which a leave request is based.

## **16.2 Definitions**

*Spouse* means a husband or wife as defined or recognized under New Mexico law.

*Domestic Partner* means a qualified partner under the terms that apply to MRCOG employees for benefits.

*Son or Daughter* means a biological, adopted or foster child, stepchild, a legal ward, or a child for whom the employee has intentionally assumed the obligations of the parental relationship, such as daily care and financial support without going through the formalities of adoption, who is under the age of eighteen (18), or who is eighteen (18) years of age or older and is incapable of self-care because of a mental or physical disability.

*Parent* means the biological or adoptive parent of an employee or an individual who intentionally assumed the obligations of the parental relationship, such as daily care and financial support, without going through the formalities of adoption when the employee was a child. This term does not include parents-in-law.

*FMLA leave* means paid or unpaid leave taken for a reason provided for by the federal Family and Medical Leave Act, 29 U.S.C. §§2601-2654.

*Health Care Provider* means (1) a doctor of medicine or osteopathy; (2) podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to subluxation correction); (3) Christian Science practitioners; or (4) any healthcare provider recognized by the MRCOG or its health care plans.

*Serious Health Condition* means an illness, impairment, or physical or mental condition that involves:

- A. In-patient care in a hospital, hospice or residential medical care facility, or subsequent treatment in connection with inpatient care; or
- B. Incapacity for more than three (3) consecutive days, involving treatment two (2) or more times by a health care provider, by a provider of health care services (e.g., nurse, physician's assistant, physical therapist)



- under the direction of a health care provider, and any subsequent incapacity or treatment related to the same condition; or
- C. Incapacity for more than three (3) consecutive days, involving treatment at least once by a health care provider which results in a regimen of continuing treatment under supervision of a health care provider; or
  - D. Pregnancy which includes any period of incapacity due to pregnancy or prenatal care; or
  - E. A chronic condition that continues over an extended period of time, and that may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.), requiring periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under the supervision of a health care provider; or
  - F. A permanent or long-term period of incapacity due to a condition for which treatment may be limited such as Alzheimer's disease, severe stroke, or the terminal stages of a disease; or
  - G. A period of absence to receive multiple treatments by a health care provider (or to recover from treatment), or by a provider of health care services, either for restorative surgery after an accident or injury, or for a condition that would likely result in a period of incapacity of more than three (3) consecutive calendar days in the absence of treatment such as chemotherapy, radiation therapy, or dialysis.

*Twelve (12) month period.* The MRCOG defines the twelve (12) month period as a rolling twelve (12) month period measured backward from the date an employee uses any unpaid FMLA leave.

### **16.3 Eligibility**

To be eligible for FMLA leave, an employee must have worked for the MRCOG twelve (12) months (or fifty-two weeks if the work is intermittent) and must have worked 1,250 hours in the twelve (12) months preceding the date the FMLA leave will begin. FLSA-exempt employees who have worked full-time for twelve (12) months are presumed to meet the hourly requirement. Paid and unpaid absences used in the twelve (12) months preceding the date the FMLA leave will begin is not counted toward the 1,250 hour total.

### **16.4 Basis for FMLA Leave**

#### **16.4.1 Birth/Placement of a Child**

An employee may take FMLA leave because of the birth or placement of a child with the employee. The right to FMLA leave expires twelve (12) months after the birth or placement of a child with the employee.

#### **16.4.2 Serious Health Condition of the Employee**

An employee may take FMLA leave for up to twelve (12) weeks for a medically certified temporary period of incapacity, illness or injury that is a serious health condition making the employee unable to work.

Medical leaves of absence for pregnancy, childbirth or related conditions are subject to the same eligibility, terms and conditions as are applicable to leaves of absence for all other types of serious health conditions.

#### **16.4.3 *Serious Health Condition of a Family Member***

An employee may take medical leave for up to twelve (12) weeks if the employee's parent, spouse, domestic partner or child has a serious health condition and the employee is needed to care for the family member. An employee is "needed to care for" a family member when either physical or psychological care is needed. It includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself/herself to the doctor, etc. The term also includes providing psychological comfort and reassurance, which would be beneficial to a child, spouse, domestic partner or parent with a serious health condition that is receiving in-patient or home care. The term also includes situations where the employee may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care, such as transfer to a nursing home.

#### **16.5 *Intermittent Leave or Reduced Leave Schedule***

**16.5.1** When an employee is eligible to take FMLA leave the employee may be permitted an intermittent leave or a reduced leave schedule. When leave is taken on an intermittent or reduced leave schedule, the leave may be measured in increments of not less than one hour. A part-time leave schedule reduces an employee's usual number of hours per work week and/or per work day. An employee is entitled to intermittent leave or leave on a reduced leave schedule if there is a medical need for the leave (as distinguished from voluntary treatments and procedures) that can best be accommodated through an intermittent or reduced leave schedule.

**16.5.2** An employee must work with the Human Resources Manager to establish a mutually satisfactory treatment schedule that does not unduly disrupt the MRCOG's operation and meets the employee's or family member's medical needs. If an employee fails to consult with the Human Resources Manager, the employee may be requested to reschedule treatments or appointments, subject to the approval of the health care provider.

**16.5.3** When FMLA leave is used for reasons where intermittent leave or reduced leave schedules are not medically necessary, an employee may request such a schedule. The Human Resources Manager has the discretion to approve or deny the request based on the needs of the MRCOG.

**16.5.4** When an employee is granted intermittent or reduced leave, the employee may be required to accept a temporary transfer to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave.

## **16.6 *Notice Requirements***

### **16.6.1 *Employee Notice of Leave***

As with any type of leave, an employee must give advance notice requesting leave and obtain approval, except in emergencies. An employee must give at least thirty (30) days written notice before leave starts. If thirty (30) days notice is not possible, notice is expected as soon as practical. "As soon as practical" means at least verbal notice within two business (2) days of learning of the need for leave followed by written confirmation. If an employee fails to give thirty (30) days notice for foreseeable leave with no reasonable excuse for the delay, the Human Resources Manager may deny the taking of leave until at least thirty (30) days after the date the employee provided notice.

Request for leave must be submitted to the Human Resources Manager who will determine if the request for leave qualifies for FMLA leave. It is the employee's responsibility to provide enough information, including the reason for requesting the leave, so that the Human Resources Manager can make this determination.

Any FMLA-qualifying absence will be designated as FMLA leave by the Human Resources Manager and will be applied to the twelve (12) week entitlement, even if not requested by the employee.

### **16.6.2 *Required Medical Certification***

The Human Resources Manager will notify the employee within two (2) workdays, if feasible, of the approval or denial of his/her FMLA leave request.

The Human Resources Manager will also within two (2) workdays, if feasible, notify the employee of the designation of the absence as FMLA qualifying leave even if the employee has not requested such leave. If the Human Resources Manager learns that the absence is for an FMLA qualifying reason, the Human Resources Manager may retroactively designate the leave as FMLA leave. The Human Resources Manager will notify the employee within two (2) workdays, if feasible, of learning the reason for the leave.

The MRCOG may make a preliminary designation of leave as FMLA qualifying if a medical certification was not provided prior to the beginning of the leave, or if the MRCOG is waiting for a second or third opinion.

The MRCOG may designate leave, which has already been taken, as FMLA leave.

### **16.6.3 Required Medical Certification**

An employee who requests leave for his/her own or an eligible family member's serious health condition must provide a medical certification from a health care provider on a form supplied by the MRCOG. Where FMLA leave is foreseeable and thirty (30) days notice has been provided, an employee must provide a medical certification before leave begins. In other cases, the medical certification must be provided within fifteen (15) days after the MRCOG requests medical certification or the employee advised their supervisor of the need for the FMLA absence. The employee is responsible for any expense connected with obtaining the medical certificate. Failure to provide the required medical certificate(s) may result in the delay or denial of FMLA leave.

The MRCOG has the right to require, at its own expense, a second medical opinion and to select the healthcare provider. If the second medical opinion and the original certificate conflict, the MRCOG has the right to require a third opinion by a health care provider on whom the MRCOG and the employee agree. The third opinion is final and binding.

If the MRCOG designates paid or unpaid leave as FMLA leave, without the employee's request for FMLA leave, the employee may dispute this designation by supplying a medical certificate from the health care provider.

The MRCOG may request additional medical certificates at reasonable intervals during an employee's FMLA leave, but no more often than every thirty (30) days, unless the reason for or duration of the leave changes.

## **16.7 Restrictions**

If both spouses work for the MRCOG, they may take only a combined total of twelve (12) weeks in any twelve month period for an FMLA qualifying reason.

## **16.8 Substitution of Paid Leave**

**16.8.1** Employees must first use accrued sick leave. After accrued sick leave is exhausted, the employee may use vacation or unpaid leave. Donated leave or injury time, excluding light duty, will be charged to FMLA leave.

**16.8.2** MRCOG recognized holidays that occur during an employee's FMLA leave will be counted as FMLA leave.

## **16.9 Employee's Rights and Responsibilities While on Leave**

During paid FMLA leave, sick and vacation leave will continue to accrue and will be prorated if appropriate. Sick and vacation leave will not accrue during any unpaid FMLA leave.

The MRCOG will continue to pay its share of insurance premiums while the employee is on paid leave; however the employee will be responsible for the full payment of insurance premiums while on unpaid leave for a full paid period or longer. The MRCOG has the right to recover premiums it paid if the employee does not return to work after the leave.

Employees on unpaid FMLA leave will not pay into PERA for that period of unpaid leave nor will the employee receive service credit for retirement purposes while on unpaid leave.

While on FMLA leave, an employee must contact the supervisor, by telephone, at least every four (4) weeks to report on their status and intention to return to work at the end of his/her leave. If the circumstances of the employee's leave changes and the employee is able to return to work earlier than anticipated, the employee must notify the supervisor at least two (2) workdays before the date the employee intends to report to work.

## **16.10 Return to Work After FMLA Leave**

### **16.10.1 Medical Certification**

An employee returning to work following a leave of absence due to his or her own serious health condition must submit a physician's statement certifying that the employee can return to work and perform the essential functions of the job, with or without reasonable accommodations. If an employee requires an accommodation under the Americans with Disabilities Act, a request must be submitted to the Human Resources Manager.

### **16.10.2 Reinstatement**

An employee, except for a key employee, returning from FMLA, has the right to return to their former position if the employee is able to perform the essential functions of the job, or they may be placed in an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. However, an employee on unpaid FMLA leave does not have any greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the unpaid FMLA leave period. An employee has no right to reinstatement if the employee would not have otherwise been employed at the time of the request for reinstatement.

The MRCOG reserves the right to deny reinstatement to key employees where such denial is necessary to prevent substantial and grievous economic injury to the MRCOG's operations. The determination of whether an employee is a key employee will be made at the time the employee gives notice of the need for leave or at the time the MRCOG designates leave as FMLA leave. Key employees will be notified of the MRCOG's intention to deny reinstatement as soon as a determination is made that injury would occur. In the event a key employee decides not to return to work from unpaid leave, the employee will remain on leave for the balance of the leave period and then be terminated.

### **16.10.3 Benefits**

If an employee does not return to work after the leave entitlement has expired, the employee may be required to reimburse the MRCOG for any health insurance premiums paid by the MRCOG during the period the employee was on FMLA leave if the failure to return to work is not due to the continuation, recurrence, or onset of a serious health condition entitling the employee to leave or other circumstances beyond the employee's control. An employee shall provide certification from the health care provider supporting a claim of inability to return to work for health reasons.

### **16.11 Prohibitions and Enforcement**

**16.11.1** The FMLA makes it unlawful for an employer to:

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

**16.11.2** The FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law that provides greater family or medical leave rights.

**16.11.3** The U.S. Department of Labor is authorized to investigate and resolve complaints of violations of the FMLA.

### **16.12 Record Keeping Requirements**

**16.12.1** The Human Resources Manager is responsible for providing written notice to the employee who is absent from work for a serious health condition (including worker's compensation claims) that their time away from work counts toward their FMLA leave entitlement.

**16.12.2** The Human Resources Manager must keep records pertaining to FMLA leave requests for three (3) years. Such records must include the following:

- (A) Dates of unpaid FMLA leave taken by employees. Leave must be designated as FMLA leave. If FMLA leave is taken in increments of less than one (1) full day, the hours of the leave must be recorded.
- (B) Copies of employee notices of leave furnished to the employer under FMLA, if in writing, and copies of all required general and specific written notices given to employees.

(C) Records of any dispute between the employer and an eligible employee regarding designation of leave as FMLA leave.

### **16.13 Confidentiality of Medical Information**

The MRCOG must maintain records and documents relating to medical certifications, re-certifications, or medical histories of employees or employees' family members in separate files and treat them as confidential medical records. Supervisors and managers may be informed regarding necessary restrictions on the work and necessary accommodations. First aid and safety personnel may be informed if an employee's medical condition might require emergency treatment. Government officials shall be provided relevant information upon request.

## **SECTION 17. INJURY TIME**

In addition to workers' compensation, the MRCOG provides injury time as a benefit to employees injured on the job. Injury time is a supplement to the workers compensation benefit so that the employee receives payments that are approximately the same as the employee's regular wage.

**17.1** Employees who are injured or who suffer an occupational disease in the performance of their duties are eligible for injury time payments beginning on the 3<sup>rd</sup> day after the injury. However, all of the following conditions must be met in order for the injury time payments to continue beyond 7 days:

- (A) The employee is receiving health care services (treatment) from the health care provider selected by the MRCOG;
- (B) The health care provider selected by the MRCOG certifies that the injury or disease requires the employee's absence from the employee's regular work;
- (C) The employee is receiving workers' compensation wage loss (temporary total disability) benefits; and
- (D) The employee is not a part-time employee, student employee or intern.

If these conditions are not met within 7 days after the injury, the injury time will be converted to sick leave, if the employee has sufficient accruals, or leave without pay.

**17.2** Injury time benefits are paid for any on-the-job injury, including multiple injuries from the same accident, prior on-the-job injury, recurrence or aggravation of an on-the-job injury or occupational disease. A prior injury is any injury suffered by the employee because of a previous accident, illness or injury to one or more body parts suffered in the performance of their duties.

**17.3** The workers' compensation wage loss benefit combined with the injury time payments provided by the MRCOG may not exceed the employee's regular wages (gross wages less statutory deductions). Injury time payments are not paid after the death of an employee.

Injury time benefits may not exceed 960 hours for the standard 40-hour workweek. Multiple injuries from the same accident will be subject to a maximum of 960 hours. Initial and subsequent injuries to the same body part or function will be subject to a maximum of 960 hours regardless of the number of subsequent events.

An employee shall be charged 8 hours of injury time for each workday the employee receives injury time, not to exceed 40 hours in a workweek. Part time employees will have injury time available on a pro-rated basis.

An employee who is on injury time status for more than 2 full pay periods shall not accrue sick or vacation leave.

**17.4** Upon exhaustion of injury time, an employee may use sick leave to supplement workers' compensation wage loss (temporary total disability) benefits. If an employee uses sick leave to supplement workers' compensation wage loss (temporary total disability) benefits, it shall be charged for the number of hours in the employee's current approved schedule for each workday, not to exceed 40 hours in a workweek.

Upon the denial or exhaustion of injury time and the exhaustion of sick leave, all accrued vacation hours will be paid in a lump sum and the employee will be terminated.

If an employee has a disability as defined by the Americans with Disabilities Act (ADA) MRCOG will consider whether a reasonable accommodation can be made prior to termination.

**17.5** The receipt by the employee of injury time payments from the MRCOG shall operate as an assignment to the MRCOG against any amount collected through a settlement or court action by the employee against a third party causing the injury or disease. The MRCOG may proceed against a third party in its own name to collect reimbursement of injury time payments. The failure of any employee to cooperate with the MRCOG in any legal or other action is considered just cause for disciplinary action up to and including termination.

**17.6** Employees on injury time will not earn service credit towards retirement through PERA.

**17.7** The Executive Director may withhold injury time benefits to any employee for good and sufficient reason. A decision to withhold injury time payments to any employee is not grievable.

## **SECTION 18. OTHER LEAVE**

### **18.1 Leave To Vote**

All employees who are registered voters and whose normal workday begins less than 2 hours after the opening of the polls, or ends less than 3 hours prior to the closing of the



polls may use 2 hours with pay for voting. The supervisor should schedule this time off for voting so that offices remain open during normal working hours and the work of MRCOG is affected as little as possible. Employees may not use voting time for any other purpose. The Executive Director may require an employee to prove that he or she is a registered and eligible voter. Abuse of this time is just cause for disciplinary action up to and including dismissal.

## **18.2 Military Leave (USSERA AND NEW MEXICO LAW)**

**18.2.1 Policy Statement.** The MRCOG recognizes the need to have a policy that addresses the employment and reemployment rights of full and part-time employees who serve in the military. It is the MRCOG's policy to comply with the Uniformed Services Employment and Reemployment Act of 1994 (USERRA) (as amended) and applicable New Mexico laws (as amended) which protect civilian job rights and benefits for veterans and members of reserve components.

**18.2.2 Covered Individuals.** USERRA gives protection to those individuals who are absent from work for active duty, active duty for training, initial active duty for training (such as drills), funeral honors duty, inactive duty training, fulltime National Guard duty (under federal, not state direction), and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty. In addition, also protected are those in service in the commissioned corps of the Public Health Service, those attending a military service academy, and those participating in a ROTC active or inactive duty training program. Covered service also includes an employee's service as an intermittent disaster response appointee upon activation of the National Disaster Medical System (NDMS) or as a participant in an authorized NDMS training program. Finally, in times of war or national emergency, the President has the authority to designate any category of persons called into the country's service at such times as a service member covered by USERRA'S rights and protections.

**18.2.3 Military Leave of Absence.** The MRCOG grants a military leave of absence to full and part-time employees while they are on active duty in:

- A. The Armed Forces of the United States, defined to include the Army, Navy, Air Force, Marine Corps, Coast Guard, and their reserve components;
- B. The New Mexico National Guard, and their reserve components;
- C. The United States Public Health Service, United States Coast and Geodetic Survey, and their reserve components;
- D. The state defense force to attend officially authorized training or instruction courses; or
- E. The civil air patrol performing search and rescue missions.

**18.2.4 Duration of Rights.** The accumulated length of a person's absence from employment may not exceed 5 years. Each time an employee is absent due to military service, the time the employee is absent will be counted against the five-year limit. There are limited exceptions to this 5 year limit. Please see the Human Resources Manager for

details.

**18.2.5 Notice Period/Request for Military Leave of Absence.** Unless precluded by military necessity or circumstances under which the giving of notice is otherwise impracticable or unreasonable, the employee (or appropriate officer of the uniformed service in which the employee is to serve) must give as much advance written or oral notice as possible of the need for military leave.

**18.2.6 Military Leave with Pay.** The following types of active military duty qualify for 15 working days of military with leave per federal fiscal year:

- A. Annual duty for training by the National Guard or Reserve Unit;
- B. Officially authorized training or instruction courses for members of the state defense force;
- C. Search and rescue missions by members of the civil air patrol; or
- D. When an employee's unit is activated due to a local emergency declared by either the President of the United States (for National Guard or Reserve units in the United States Armed Forces) or the Governor of New Mexico (for New Mexico National Guard or New Mexico state defense force).

Such military leave is paid at the employee's straight-time rate of pay. Once the 15 workday period is used, the employee is on military leave without pay for any remaining absence.

**18.2.7 Military Leave without Pay.** If an employee is absent from work due to active military service, the MRCOG will grant the employee an unpaid leave of absence for the duration of such period of service up to the maximum required by USERRA.

**18.2.8 Reemployment.** Under the Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994, revised, an employee is entitled to reemployment by the MRCOG upon separation from the military service, provided the employee:

- A. Was honorably discharged or terminated from service;
- B. Was employed in a position for which there was an expectation of continued Employment;
- C. Has not been absent for duty in the Uniformed Services for longer than a cumulative period of 5 years, unless involuntarily retained in the Uniformed Service;
- D. Reported to work or notified his/her supervisor of an intention to return to work, at the proper time, as indicated in the following table;
- E. In all cases, the MRCOG will reinstate an employee in accordance with federal and state law.

Period of Service	Action Employee Must Take	When Action Must Be Taken From Completion of Service
1-30 days	Report to Work.	(1) On the next regularly scheduled work shift on the first full calendar day after service ended, plus the time for safe transportation back to his/her residence and eight hours rest; or (2) as soon as possible after the eight hour rest period, if, through no fault of the employee, it would be impossible or unreasonable to report within the time described in (1).
31-180 days	Notify his/her supervisor in writing of the employee's intent to return to work.	Within 14 calendar days. If complying with this deadline is impossible or unreasonable through no fault of the employee, on the next first full calendar day when submitting the request becomes possible.
181+ days	Submit a written request for reemployment.	Within 90 calendar days after completing service.

**18.2.9 Extension of Deadlines.** For veterans who are hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of service, the reporting or application deadlines are extended for up to 2 years.

**18.2.10 Reemployment.** An eligible employee will be reinstated to his/her former position or a comparable position.

**18.2.11 Benefit Continuation and Reinstatement.** The following benefit policies pertain to periods of military service qualifying under USERRA:

**A. Healthcare:** The MRCOG provides employees with limited health coverage during military leave. For an employee on active duty for fewer than 31 days, the MRCOG provides healthcare coverage as if he/she had not taken leave. Those on active duty for 31 or more days may elect to continue employer sponsored healthcare for up to 24 months. As with other extended leaves, the MRCOG may require employees electing such coverage to pay up to 102% of the full premium or as required by the City of Albuquerque.

**B. Retirement Benefits:** Upon your reemployment, the Human Resources Manager will advise you of your specific rights and obligations regarding the restoration of your retirement benefits. The MRCOG will comply with USERRA and the Public Employees Retirement Act (PERA).

**C. Nonseniority Based Benefits:** Consistent with USERRA, the MRCOG treats employees on military leave at least as favorably as employees on other

comparable types of leave. For vacation leave, employees will not accrue vacation leave when they are on military leave without pay for more than 15 consecutive calendar days unless such accrual is permitted for employees who are on comparable leaves of absence. Accrued vacation will not be dropped at the end of the year.

**D. Training or Re-Training:** The MRCOG will make reasonable efforts (such as training or retraining) to enable returning service members to refresh or upgrade their skills to help them qualify for reemployment or a promotional opportunity.

**E. Extension of Benefits:** The MRCOG's Board of Directors reserves the right to extend the type and/or duration of benefits for employees on military leave on a case-by-case basis. Circumstances which may warrant the Board's consideration include, for example, national emergencies.

**18.2.12 Additional Information.** This policy may not address all issues concerning your rights during military leave. Insofar as issues arise that are not addressed in this policy or are inconsistent with this policy, the MRCOG will abide by USERRA and controlling state laws. Should you have any questions or require further information, please see the Human Resources Manager.

### **18.3 *Leave for Victims of Domestic Abuse***

The MRCOG provides leave to employees who are victims of domestic abuse pursuant to the Promoting Financial Independence for Victims of Domestic Abuse Act, NMSA §50-4A-1 et seq.

#### **18.3.1 *Definitions***

**18.3.1.1** "domestic abuse" has the same meaning as it does in the Family Violence Protection Act, NMSA §40-13-1 et seq.;

**18.3.1.2** "domestic abuse leave" means intermittent paid or unpaid leave time for up to fourteen days in any calendar year, taken by an employee for up to eight hours in one day, to obtain or attempt to obtain an order of protection or other judicial relief from domestic abuse or to meet with law enforcement officials, to consult with attorneys or district attorneys' victim advocates or to attend court proceedings related to the domestic abuse of an employee or an employee's family member;

**18.3.1.3** "employee" means a person who is employed by an employer;

**18.3.1.4** "employer" includes a person, a firm, a partnership, an association, a corporation, a receiver or an officer of the court of New Mexico, a state agency, or a unit of local government or a school district;

**18.3.1.5** "family member" means a minor child of the employee or a person for whom

the employee is a legal guardian;

**18.3.1.6** “order of protection” means a court order granted pursuant to the Family Violence Protection Act; and

**18.3.1.7** “retaliation” means an adverse action against an employee, including threats, reprisals or discrimination for engaging in the protected activity of taking domestic abuse leave.

### **18.3.2 *Domestic Abuse Leave Required; Retaliation Prohibited***

The MRCOG shall grant an employee domestic abuse leave without interfering with, restraining or denying exercise of rights under the Promoting Financial Independence for Victims of Domestic Abuse Act or attempting to do so. Retaliation against an employee for using domestic abuse leave is prohibited.

### **18.3.3 *Certification; Verification***

**18.3.3.1** When domestic abuse leave is taken in an emergency, the employee or the employee's designee shall give notice to the employer within 24 hours of commencing the domestic abuse leave.

**18.3.3.2** The MRCOG may require verification of the need for domestic abuse leave, and, if so, an employee shall provide one of the following forms of verification in a timely fashion:

- A. a police report indicating that the employee or a family member was a victim of domestic abuse;
- B. a copy of an order of protection or other court evidence produced in connection with an incident of domestic abuse, but the document does not constitute a waiver of confidentiality or privilege between the employee and the employee's advocate or attorney; or
- C. the written statement of an attorney representing the employee, a district attorney's victim advocate, a law enforcement official or a prosecuting attorney that the employee or employee's family member appeared or is scheduled to appear in court in connection with an incident of domestic abuse.

### **18.3.4 *Impact of Domestic Abuse Leave on other Employee Benefits***

**18.3.4.1** For domestic abuse leave, an employee may use accrued sick leave or other available paid time off or unpaid leave time consistent with the MRCOG's policies.

**18.3.4.1** To the extent permitted by law, the MRCOG shall not withhold pay, health coverage insurance or another benefit that has accrued to the employee when an employee takes domestic abuse leave. The MRCOG will not include time taken for domestic abuse leave in calculating eligibility for benefits.

### **18.3.5 Confidentiality**

The MRCOG will not disclose verification information provided under Subsection 18.3.3 and shall maintain confidentiality of the fact that the employee or employee's family member was involved in a domestic abuse incident, that the employee requested or obtained domestic abuse leave and that the employee made any written or oral statement about the need for domestic abuse leave. The MRCOG may disclose an employee's information related to domestic abuse leave only when the employee consents, when a court or administrative agency orders the disclosure or when otherwise required by federal or state law.

### **18.4 Hardship Leave**

Upon recommendation of the supervisor, the Executive Director may grant leave with pay to a qualified employee upon demonstration of extreme hardship due to a life-threatening personal injury or sickness of the employee. Employees who have at least 5 years of continuous service are eligible for paid leave not to exceed 6 calendar months. Employees who have at least 10 years continuous service are eligible for 12 calendar months of paid leave. Employees working 20 hours or more will receive benefits on a prorated basis. Hardship leave will be granted only after the employee has exhausted vacation leave, sick leave and injury time, and only if the employee is not eligible for pension benefits under the MRCOG or state retirement programs or under the federal Social Security Act. Employees on hardship leave will not accrue sick or vacation leave.

No employee will be eligible for such leave unless the supervisor and the Executive Director determine the employee has clearly exhibited exceptional performance of duties. A decision of the Executive Director not to grant such leave with pay will not be the subject of a grievance as defined in this policy.

### **18.5 Birthday Leave**

A MRCOG employee in a pay status receives leave with pay for the employee's birthday (up to 8 hours). Employees who work less than 40 hours per week will receive Birthday hours prorated to a 40-hour week. Birthday leave accrues on January 1 or each calendar year and must be taken within one calendar year.

### **18.6 Managerial Leave**

Employees who are exempt under the FLSA are required to perform certain functions regardless of the number of hours necessary to complete assigned tasks. Supervisors are encouraged to use flexible work schedules, as appropriate. However, unusual circumstances occasionally place an extra demand on an employee, which requires work involving a substantial number of hours that cannot be accommodated through flexible work schedules.

Managerial leave is paid leave granted to exempt employees who may be required to perform an inordinate amount of work in addition to or outside of their regular work schedules. Routine or periodic meetings or assignments outside of the normal workday do not justify managerial leave. Managerial leave is generally discouraged.

Managerial leave must be authorized by the Executive Director who must also specify the maximum award for such leave and date by which leave must be used. Managerial leave may not be converted to cash payment under any circumstances.

### **18.7 *Blood Donation***

All classified MRCOG employees who donate blood during the City of Albuquerque's blood drive will be granted 2 hours leave with pay in the same pay period as the donation. In addition, the time taken for donating blood will be with pay. Employees must arrange with their supervisors to take this leave.

### **18.8 *Court Service***

Employees who are called for jury duty or to testify on behalf of the MRCOG in court during normal work hours will be paid at their regular rate of pay for the time their service is required. The employee must pay all fees received back to the MRCOG. The employee must notify his/her supervisor of jury duty or other required court service as soon as possible.

### **18.9 *Leave with Pay***

The Executive Director may authorize leave with pay for services or activities of employees outside the scope of their employment, which can reasonably be anticipated, directly or indirectly, to benefit the MRCOG. Such leave will not exceed 80 hours.

### **18.10 *Administrative Leave With Pay During an Investigation***

The Executive Director may place an employee on administrative leave with pay while the MRCOG conducts an investigation into allegations of misconduct for good and sufficient reason that is considered to be in the best interest of the MRCOG.

Employees on paid administrative leave shall be available by phone and in person between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday. During this period, the Executive Director may also assign the employee duties and responsibilities that are of benefit to the MRCOG. An employee's failure to comply with assigned duties and responsibilities shall constitute unauthorized leave without pay. The Executive Director will document in writing that the employee is being placed on administrative leave and set forth the expectations of the employee while on leave, including but not limited to the return of any and all MRCOG property and equipment. Employees on paid administrative leave shall not obtain other employment.

Administrative leave with pay under these circumstances does not constitute discipline and may not be appealed under the MRCOG's appeal procedures.

If the charges are substantiated, disciplinary action will be taken in accordance with MRCOG policy.

Administrative leave during an investigation shall be limited to 30 workdays. If it is necessary to extend the leave beyond 30 workdays, the Executive Director will review the status of the investigation and, if appropriate, extend the leave.

## **SECTION 19. LEAVE WITHOUT PAY**

The MRCOG may grant leave without pay not exceeding 12 months to its employees under certain conditions. A classified MRCOG employee with 12 months continuous service is eligible for leave without pay not to exceed 12 months. Leave without pay for a probationary employees is limited to 30 calendar days. The probationary period will be extended for a period equal to the leave. The Executive Director or designee must approve all requests for leave without pay.

**19.1** Employees may be granted leave without pay for the following reasons:

- (A) due to sickness or disability certified by a qualified doctor of medicine but not covered by the MRCOG's Family Medical Leave Act Policy;
- (B) to run for public office;
- (C) to hold public office;
- (D) to attend school when it is clearly demonstrated the subject matter is directly job related;
- (E) for additional vacation time; or
- (F) for good and sufficient reason which the Executive Director considers to be in the best interest of the MRCOG.

Except under unusual circumstances, voluntary separation to accept employment outside the MRCOG service is not sufficient reason for granting leave without pay.

**19.2** Positions will not be held open for employees who are granted leave without pay for more than 30 days unless the Executive Director agrees otherwise prior to the leave. An employee on leave without pay for more than 30 days may return to work provided there is an available position and the employee notifies the MRCOG of his/her desire to return to work at least 30 days prior to the scheduled end of the leave period. Any agreement between the MRCOG and an employee for leave without pay under this Section, including whether the employee's position will be held vacant, must be in writing.

**19.3** Employees must exhaust all accrued vacation and other paid leave, with the exception of sick leave, prior to receiving approval for leave without pay. If the request for leave without pay is related to a health or medical condition, the employee must exhaust all accrued sick leave prior to receiving approval for leave without pay.



Employees on leave without pay will not accrue sick or vacation leave or any other benefits. Employees must directly pay full contributory benefits when in an unpaid status for one pay period or longer. In some circumstances, leave without pay will not count as service credit for PERA retirement purposes. Employees should contact PERA regarding this issue.

## **SECTION 20. EMPLOYEE ATTENDANCE**

### **20.1 Attendance**

Adequate staffing is paramount to the safe and effective operation of the MRCOG and as such all employees shall strictly adhere to their assigned work schedules.

### **20.2 Reporting Employee Tardiness**

**20.2.1** Employees who have reason to believe that they will be late shall immediately call and inform their supervisor prior to their arrival.

**20.2.2** Employees who will be tardy are not released of the responsibility of reporting to work.

**20.2.3** When an employee is tardy he/she must submit a completed leave request form to his/her supervisor with a written explanation for the tardiness by the end of the employee's scheduled work day.

**20.2.4** The supervisor will forward the leave request to the Human Resources Manager for review and placement in the employee's personnel file.

**20.2.5** If an employee is tardy, the supervisor shall consider disciplinary action.

**20.2.6** Excessive tardiness includes, but may not be limited to, being late more than 4 times a year.

### **20.3 Reporting Employee Absences**

**20.3.1** Employees are required to give their supervisor at least 1 hour notice when requesting sick leave for an unplanned personal absence. Employees in safety sensitive positions are requested to give their supervisor or designee at least 4 hours before their shift starts to ensure adequate coverage.

**20.3.2** An employee who takes unauthorized and unscheduled leave is considered to be absent without leave (AWOL). An employee who is AWOL has committed a very serious violation of the MRCOG's Personnel Policies and subject to disciplinary action up to, and including, termination. An employee who is AWOL for 3 consecutive days without notification, authorization and justification will be considered to have abandoned their

position and voluntarily resigned their MRCOG employment, and will not be eligible for rehire.

## **20.4 Sick Leave Usage**

**20.4.1** The acceptable level of sick leave usage for MRCOG employees is up to 70% of the amount of leave accrued for 1 year. Sick leave usage over the specified percentage is considered over utilization and is just cause for disciplinary action if not justifiable and supported by adequate medical documentation. For example, absences involving emergencies, hospitalization, or out-patient surgical procedures, serious illness, or a disability requiring long term sick leave absences (including child birth) will continue to be charged to sick leave and will be exempt from the 70% standard if appropriate documentation is provided.

**20.4.2** Other circumstances indicating the over utilization of sick leave include, but are not limited to, the following:

**20.4.2.1** A pattern of taking sick leave in conjunction with days off, holidays, vacation leave, etc.

**20.4.2.2** Long-term employees with no appreciable sick leave balance.

**20.4.2.3** A pattern of at least 1 day of sick leave taken each month.

## **20.5 Certification of Sick Leave**

**20.5.1** Under certain circumstances, an employee will also be required to provide his/her supervisor a physician's certificate or health care provider statement upon return to work. A physician's certificate or health care provider statement is an original form, letter or note signed and dated by the health care provider who provided treatment certifying that the employee was unable to work due to health reasons and that the employee is fit to return to duty. In cases where sick leave is taken by the employee for the medical consideration of the employee's spouse, domestic partner, parent, children or any person for whom the employee serves as legal guardian, the employee may be required to provide a note from a health care provider certifying that the employee participated in providing health care to the spouse, domestic partner, parent, or child. A physician's certificate or health care provider statement is required in the following circumstances:

**20.5.1.1** The employee has taken more than 3 consecutive days of sick leave.

**20.5.1.2** The employee's work performance is inadequate.

**20.5.1.3** The employee demonstrates an inability to maintain regular attendance.

**20.5.1.4** The MRCOG determines that a pattern of absences indicative of sick leave abuse or misuse is being established by the employee, even if the employee has utilized fewer than 3 consecutive days of sick leave. A "pattern of absences" consists of at least 3 "occurrences" in a rolling twelve 12 month period. The following is a non-exhaustive list of "occurrences":

- A. The day(s) before or after a holiday;
- B. The first or last day of a work week (the employee's "Friday" or "Monday");
- C. During the period of denied annual leave;
- D. During a holiday (if the employee is scheduled to work);
- E. The day(s) after pay is received;
- F. The day(s) when the employee has certain responsibilities (i.e., reports, inspections or audits are due, the employee has responsibility for all or part of a meeting, etc.);
- G. Intermittent use for 1 or 2 days not involving a chronic, diagnosed health problem;
- H. Within 2 weeks preceding or following significant levels of overtime; or

**20.5.2.5** The employee has used excessive sick leave in relation to his/her longevity of employment, meaning that he/she has a sick leave balance that is less than 30% of the total sick leave available based on years of employment. Major illness or injury, or periods of approved FMLA leave, will not be counted in determining sick leave usage in relation to longevity of employment.

**20.5.2.6** The employee's supervisor or Human Resources Manager, as applicable, may not waive the requirement that the employee submit a physician's certificate or health care provider statement.

**20.5.2.7** Failure to submit a physician's certificate or health care provider statement precludes the employee from receiving sick leave with pay for the period in dispute and may result in disciplinary action up to and including dismissal.

**20.5.2.8** If the employee's supervisor or the Human Resources Manager has reason to doubt the validity of the physician's certificate or health care provider statement, the Executive Director may require the employee to obtain a second and third opinion with a health care professional of the MRCOG's choosing in accordance with the following:

- A. The MRCOG must pay all expenses incurred, including reasonable travel expenses, incurred in obtaining any additional opinions;
- B. The MRCOG will select a health care professional in a specialty area such that there is a reasonable expectation that the health care professional can assess the validity of the information provided by the employee's health care provider;
- C. The second and third health care professionals will not be City of Albuquerque employees or providers whose services are regularly utilized or contracted for by the City of Albuquerque or the MRCOG.
- D. The employee will not be required to travel outside of a normal commuting distance to obtain a second or third opinion, except in unusual circumstances.
- E. If the second opinion differs from the opinion of the employee's health care

provider, a third opinion may be required.

**F.** The employee and the MRCOG must make a good faith effort to agree on the health care professional to be selected for the third opinion.

**G.** The MRCOG's failure to make a good faith effort to reach an agreement on the health care professional to provide the third opinion will result in the confirmation of the first opinion by the employee's health care provider.

**H.** The employee's failure to make a good faith effort to reach an agreement on the health care professional to provide the third opinion will result in the confirmation of the first opinion by the employee's health care provider.

**I.** All third opinions obtained will be binding; and

**J.** The employee will provisionally be approved for sick leave pending receipt of any requested second or third opinions.

### ***20.6 Consideration of Sick Leave Usage in Employee Performance Evaluations***

**20.6.1** The supervisor must always check an employee's attendance record before preparing the employee's performance evaluation.

**20.6.2** Poor attendance and/or tardiness shall be noted on the evaluation.

**20.6.3** Sick leave usage may be considered when an employee is eligible or applies for a promotion, special assignment, or transfer.

### ***20.7 Investigations into Potential Abuse of Misuse of Sick Leave***

MRCOG employees are obligated to cooperate in any internal investigation concerning employee leave. Failure to do so will result in the loss of leave for the time in dispute and be considered just cause for disciplinary action up to and including termination.

## **SECTION 21. PROFESSIONAL DEVELOPMENT / TRAINING**

The MRCOG, subject to the availability of funds, encourages the professional development of its full-time, non-probationary employees, through educational leave, tuition assistance and payment of membership in professional organizations when it is determined to be of mutual interest to MRCOG and the employee and subject to the conditions in this section.

### ***21.1 Educational Leave***

The Executive Director may grant up to 3 hours per week of MRCOG time for job-related education subject to the following conditions:

- A. the employee provides an equal amount of off-duty time attending a course;
- B. the course is only available during normal working hours unless justifiable reasons prevent the employee from attending after working hours;

- C. continued employee productivity is expected;
- D. the employee has a satisfactory job performance record; and
- E. the employee has and maintains a satisfactory academic record.

An employee should submit an Educational Leave request to his/her supervisor for recommendation in sufficient time for the Executive Director to approve/disapprove before the course begins.

### **21.2 Tuition Assistance**

The Executive Director may grant tuition assistance for courses or degrees that enhance or create a skill that relates to the employee's current profession and demonstrates a benefit to the MRCOG. Annually, the Executive Director will determine what the maximum dollar amount per credit hour reimbursement will be.

An employee should submit a request for tuition assistance to his/her supervisor for recommendation in sufficient time for the Executive Director to approve/disapprove before the course begins.

Tuition assistance is subject to the following:

- A. the employee is solely responsible for payment of all tuition related expenses;
- B. reimbursement will be made upon receipt of proper documentation that the employee completed the course and achieved a grade of C or above, following completion of the course;
- C. reimbursement is limited to the following maximum awards per fiscal year: 9 credit hours at University of New Mexico; 9 credit hours at Central New Mexico Community College; or 4 credit hours at other approved institutions; and
- D. employees are responsible for purchasing their textbooks.
- E. Graduate level degrees will be considered individually based on the needs of the position and organization.

### **21.3 Professional Memberships / Certifications**

The MRCOG may pay dues for Certifications and membership in 2 professional organizations for full-time professional, non-probationary employees per year. The membership must be appropriate to the position or field of expertise and advantageous to the MRCOG, as determined in the sole discretion of the Executive Director. Payment is subject to availability of funds. The MRCOG may reimburse a non-probationary employee for one license or certification test that is applicable to their position. The amount paid will be reported on IRS forms as required.

## **SECTION 22. INSURANCE BENEFITS**

The MRCOG offers a variety of contributory and non-contributory insurance benefits. This coverage is also available to a domestic partner of a MRCOG employee under the same terms that apply to City of Albuquerque employees. Insurance booklets containing detailed information on insurance benefits are available to MRCOG employees from the Human Resources Manager.

### **22.1 *Group Life Insurance***

All employees of the MRCOG receive life insurance protection, effective 30 days after the date on which employment begins. The amount of protection is determined according to the employee's basic annual earnings. Protection will be adjusted, if necessary, to correspond to pay rate changes. Group life insurance will continue for 31 calendar days after an employee terminates employment. During this period, the employee may convert the group policy to an individual policy.

### **22.2 *Optional Contributory Health/Dental Insurance***

Employees may enroll in contributory health or dental insurance within 30 days of the date in which employment begins. Coverage begins on the first day of the full pay period immediately following submittal of enrollment documents. Dependents are eligible to be included on the same date the employee becomes insured or on the date he or she acquires an eligible dependent. The MRCOG and the employee share the cost of contributory premiums for the employee only.

Employees may sign up for coverage during an open enrollment period each year, usually during the month of May. Under the Health Insurance Portability and Accountability Act of 1996 (HIPPA) an employee may enroll within 30 days of the date the employee marries or acquires a child through birth or adoption. An employee should make any changes to insurance benefits in person at the MRCOG office.

When an employee is in non-pay status for one full pay period or longer, he or she must arrange with the City of Albuquerque Insurance Department for direct payment to maintain any contributory benefits.

### **22.3 *Optional Supplemental Life Insurance***

Employees who work at least 20 hours per week may participate in the supplemental life insurance program offered by the City of Albuquerque. Participation is subject to specific eligibility requirements. Eligible employees must enroll within 30 days of the date of hire, during the annual open enrollment period or within 30 days of acquiring eligible dependents. The total premium cost is the responsibility of the employee with no contribution by the MRCOG.

If an employee leaves the MRCOG service, supplemental life insurance will continue

through the end of the pay period in which the employee terminated. An employee may convert the group supplemental life insurance policy to an individual policy at time of termination.

#### **22.4 Continuation of Health Insurance**

The Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986 provides for the continuation of health care coverage for a covered employee and covered dependents due to a qualifying event that causes loss of health coverage.

**22.4.1** COBRA continuation coverage may be available for 18 months in the event of termination or 36 months in the event of death, divorce/legal separation, entitlement to Medicare or loss in dependent status.

**22.4.2** To be eligible for COBRA coverage, the qualified beneficiary must be enrolled in the City of Albuquerque group health plan on the day before the qualifying event takes place, or a child is born to or placed for adoption with a covered employee during the COBRA coverage period.

**22.4.3** A qualifying event is defined as termination of employment (other than for gross misconduct) or reduction in hours of employment; death of a covered employee, the divorce or legal separation of a spouse from a covered employee; entitlement to Medicare of a covered employee; or a child no longer satisfies the plan's definition of a dependent child.

**22.4.4** The covered employee or dependent is required to notify the City of Albuquerque Human Resources Department, Insurance and Benefits Office of a divorce, legal separation, or change in the status of a dependent child within 60 days after the date of the event. If notification is not received within this time period, COBRA continuation coverage will not be provided.

#### **22.5 Loss of Non-City Sponsored Health Care Coverage**

If a MRCOG employee and/or eligible dependents are covered under a non-City sponsored health care plan that is terminated through no fault of the insured, the employee and eligible dependents may enroll under a City health care plan within 31 days of termination of coverage, with no lapse in coverage, subject to proof of prior coverage and coverage termination.

### **SECTION 23. PERSONNEL RECORDS**

The MRCOG maintains a current and accurate employment record for each employee. Employees are encouraged to review their individual personnel files for accuracy and completeness. Employment information that is deemed confidential by law will be protected from disclosure to the extent permitted by law.

### **23.1 Access to Personnel Records**

**23.1.1** Access to all materials contained in an employee's personnel record is restricted to the following persons:

- 23.1.1.1** the employee;
- 23.1.1.2** the employee's representative in a MRCOG administered grievance or appeal process as authorized in writing by the employee;
- 23.1.1.3** the MRCOG Executive Director, Human Resources Manager, immediate supervisor and MRCOG attorney in the performance of their duties; or
- 23.1.1.4** any person with written authorization signed by the MRCOG employee.

**23.1.2** Some materials contained in MRCOG personnel records are subject to inspection by the public under the New Mexico Public Records Act. The MRCOG will comply with a proper request under the Act.

### **23.2 Contents of Personnel Records**

**23.2.1** Employee information that should be maintained in the employee's personnel file and is accessible to the public includes the employee's application for employment and resume; Personnel Action Forms; PERA membership application/documents; and certifications, degrees, permits, licenses and awards.

**23.2.2** Employee information that should be maintained in the employee's personnel file and is confidential includes letters of reference or evaluation; performance evaluations; letters of commendation/recommendation; the employee's home address, home telephone number and social security number; and records relating to disciplinary action.

**23.2.3** Employees are encouraged to review their personnel files periodically to ensure that all information is current and accurate. Employees are permitted to view the contents of their personnel files by making an appointment with the Human Resources Manager. All documents must remain in the file and no notations may be made to the records contained in their personnel file.

**23.2.4** An employee challenging the accuracy of information in his/her personnel file must make a written request to the Human Resources Manager to correct the perceived inaccuracy. Only the Executive Director may authorize the permanent removal of material from an employee's personnel record.

**23.2.5** The MRCOG complies with the Immigration Reform and Control Act of 1986. Employees will be required to provide proof of identity and employment eligibility. The Human Resources Manager will maintain documents provided as proof separate from the employee personnel files.



**23.2.6** Information obtained as part of a required medical examination or inquiry regarding the medical condition or history of applicants and employees is maintained on separate forms and in separate medical files and treated as a confidential medical record.

## **SECTION 24. SEPARATION FROM EMPLOYMENT**

### **24.1 Early Retirement**

Immediately prior to retirement from active service with the MRCOG an employee may take leave with pay equivalent to the amount of sick and vacation leave the employee has accumulated. An employee in Early Retirement is entitled to all benefits except donated leave and hardship leave.

### **24.2 Retirement**

**24.2.1** The State of New Mexico requires all new MRCOG employees to join the Public Employees Retirement Association of New Mexico (PERA). The information in these policies is included only as an aid for MRCOG employees. State law regulates PERA benefits and employees are encouraged to contact PERA with questions.

**24.2.3** The MRCOG will withhold an initial membership fee from the employee's first paycheck and a percentage of the employee's compensation will be deducted each pay period thereafter, consistent with the plan currently in effect for the employee group.

**24.2.4** Employees leaving the MRCOG may withdraw PERA contributions. If an employee leaves the MRCOG prior to eligibility for retirement and is vested, he/she may withdraw their PERA contributions, or leave the contributions for a deferred retirement benefit. Contributions withdrawn may be replaced, with payment of interest, to build retirement credit if hired by another PERA member agency.

**24.2.5** An employee retiring through PERA is eligible for a retirement pension as provided by state law.

**24.2.6** PERA provides additional benefits, including duty and non-duty related disability benefits and general death benefits resulting from any cause.

**24.2.7** The Human Resources Manager processes retirements for MRCOG employees. The following sections offer some guidelines regarding retirement planning:

**24.2.7.1** Employees should plan to begin processing for retirement at least 3 months before the projected date of retirement. The employee should request a confirmation of service credits from PERA and submit a memorandum to the Executive Director and Human Resources Manager that includes the effective date of retirement. To ensure a

timely annuity, final retirement processing should be completed at least 30 days prior to the retirement date.

**24.2.7.2** A retiring employee may convert their accrued sick leave (in accordance with the sick leave conversion policy) and vacation leave to cash payment within 3 months of the retirement date.

**24.2.8** At retirement, the amount of the group life insurance policy is reduced to one-half. Retiring employees and eligible dependents may elect to transition to the Retiree Health Insurance Plan offered by the State of New Mexico.

### **24.3 Resignation**

**24.3.1** Resignation is the voluntary termination of employment prior to retirement. A MRCOG employee who wishes to resign in good standing shall submit a letter to his/her immediate supervisor at least 2 weeks before leaving employment, stating the date the resignation shall become effective. Employees who resign before they are eligible for retirement may request a refund of contributions from the Public Employees Retirement Association (PERA) of New Mexico.

**24.3.2** A MRCOG employee's unauthorized absence from work for a period of 3 consecutive regularly scheduled work shifts or 3 workdays, whichever is greater, may be considered an automatic resignation. Such an automatic resignation is not the subject of a grievance as defined in this policy, but is subject to pre-disciplinary procedures.

### **24.4 Death Benefits**

Upon the death of a MRCOG employee, the MRCOG will pay cash to the beneficiary of the employee (as identified in the City of Albuquerque's life insurance policy) for sick and vacation leave accrued at the time of death, in addition to final wages. PERA also provides death benefits under state law.

## **SECTION 25. DISCIPLINARY ACTION**

The MRCOG expects its employees to perform their work in accordance with supervisory expectations and to follow the Personnel Policies and other rules and guidelines that apply to employment with the MRCOG. Occasionally, however, disciplinary action is necessary to correct employee misconduct or performance that fails to meet expectations. The type of disciplinary action imposed will depend on the severity of the infraction and the employee's previous work record. Progressive discipline will normally be used; however, some infractions may be so serious that the first disciplinary action may require suspension without pay, demotion or even dismissal.

### **25.1 Forms of Disciplinary Action**

The MRCOG may impose the following forms of disciplinary action to address

unacceptable employee conduct:

**25.1.1 Verbal Reprimand.** An verbal reprimand is used for minor infractions and to inform the employee that behavior or conduct needs to change or improve. The verbal reprimand should be given in private. The supervisor should inform the employee that the supervisor is issuing an verbal reprimand. The verbal reprimand should: (A) remind the employee of pertinent polices and work rules; (B) provide examples of how the employees behavior or performance has fallen short of expectations; (C) explain the impact of the employees deficiencies on the MRCOG and coworkers; (D) describe the actions the employee needs to take to correct the problem; and (E) inform the employee that failure to improve may result in more severe discipline. Supervisors shall prepare a memorandum for the supervisors own records documenting that the employee has received a verbal reprimand. Verbal reprimands may not be grieved or appealed under these policies.

**25.1.2 Written Reprimand.** A written reprimand will be issued by the employees supervisor in the event the employee continues to disregard the oral reprimand or if the infraction is severe enough to warrant a written reprimand in the employees personnel file.

An employee may file a grievance regarding a written reprimand according to the Resolution of Non-disciplinary Concerns policy. However, an employee may not file an appeal under the MRCOG's appeal procedures.

**25.1.3 Suspension without Pay.** The Executive Director may suspend an employee without pay when the infraction is of a serious enough nature to warrant discharge but circumstances related to the employees overall performance mitigates the imposition of dismissal. An employee may be suspended without pay by the Executive Director for up to 160 work hours.

A classified, full-time or classified, part-time employee may appeal a suspension without pay pursuant to the MRCOG's appeal procedures.

**25.1.4 Demotion.** The Executive Director may demote an employee in those instances where the employee is unwilling or unable to perform the responsibilities of his/her position. The employee may be moved from one position to another position with a lower pay rate for which the employee qualifies or, alternatively, the employee may be permitted to remain in the same position but will be subject to a reduction in his/her pay rate. Demotion is not to be used as a substitute for discharge from employment, when a discharge is warranted. Upon receipt of the Notice of Final Action (discussed below in the Disciplinary Procedures section), the Human Resources Manager shall adjust the employee's pay and benefits accordingly beginning the next pay period after the effective date of the demotion.

A classified, full-time or classified, part-time employee may appeal a demotion pursuant to the MRCOG's appeal procedures.

**25.1.5 Discharge.** Probationary employees, temporary employees, student employees, and interns may be dismissed at any time without cause or for any lawful reason. These employees may not utilize the MRCOG's grievance or appeal procedures to challenge a decision to terminate their employment.

The Executive Director may dismiss a classified, full-time or classified, part-time employee for cause. An employee may be discharged from his/her employment with the MRCOG after previous attempt(s) at corrective action have failed or the employees conduct is severe enough to justify immediate dismissal. An employee who is dismissed for cause will not be considered for reemployment with the MRCOG. A classified, full-time or classified, part-time employee may appeal the Executive Director's decision to discharge him/her from employment pursuant to the MRCOG's appeal procedures.

**25.1.6 Persons Authorized to Impose Discipline.** The Executive Director may issue any level of discipline. A supervisor may issue a verbal or written reprimand and a suspension without pay for up to 1 day after approval from the Executive Director.

**25.1.7 Release of Disciplinary Records.** Unless an authorization and waiver of liability are executed by the former employee at the time information is sought by any potential subsequent employers, the MRCOG will provide potential subsequent employers only with information regarding that employees dates of employment and position held and personnel documents that are public record, if requested.

## **25.2 *Reasons for Disciplinary Action***

Disciplinary action may only be issued against classified employees for just cause. Just cause for discipline is any behavior or conduct significant or substantial in nature relating to the employee's work that is inconsistent with the employee's obligation to the MRCOG. Circumstances justifying discipline include, but are not limited to, the following:

**25.2.1** Employees are absolutely prohibited from engaging in any workplace or on-duty conduct which, by its nature, serves to threaten, frighten, intimidate, menace or cause physical harm to any MRCOG employee. The use of profane language or gestures is prohibited and may be considered an act of workplace violence. Nothing regarding the above prohibition of workplace violence will be construed to prohibit supervisors and managers from appropriately disciplining employees or correcting job performance deficiencies in an appropriate manner.

**25.2.2** Commission of a felony or misdemeanor related to the position held by the employee or conviction of a crime involving moral turpitude;

**25.2.3** Incompetence, inefficiency or inadequate performance of an employee's duties;

**25.2.4** Willful falsification or omission of information on an employment application, resume, timecard/record or other MRCOG document;

**25.2.5** Insubordination or uncooperative behavior;

**25.2.6** Misappropriation or personal use of MRCOG funds, property, resources, theft or fraud;

**25.2.7** Discriminatory, harassing or retaliatory behavior or conduct;

**25.2.8** Violation of confidentiality or the release of confidential information;

**25.2.9** Being absent from duty without proper authorization, regardless of the length of time;

**25.2.10** Violation of the Personnel Policies; or

**25.2.11** Other reasons, including but not limited to conduct on or off-duty, that may:

- A. Call into question the employee's ability to perform assigned duties or job functions;
- B. Harm public respect for MRCOG employees or confidence in the operation of MRCOG services; or
- C. Impair the operation or efficiency of any MRCOG function.

### **25.3 *Procedures for the Imposition of Discipline***

The following procedures shall be followed in order to impose disciplinary action:

**25.3.1 Notice of Contemplated Action.** To initiate disciplinary action more severe than an oral reprimand, the MRCOG shall provide the employee with a written notice that disciplinary action is contemplated against him/her. This is called a Notice of Contemplated Action. The notice shall briefly state (A) the factual basis for the contemplated disciplinary action, (B) the policies, rules, or directives violated by the employee's conduct; and (C) the type of disciplinary action contemplated. The notice shall also advise the employee that he/she will have an opportunity to respond to the allegations and the contemplated discipline at a pre-disciplinary hearing between the employee and the Executive Director or designee. The notice will also set forth the date, time and place for the employee's pre-disciplinary hearing. In conjunction with the notice of contemplated action, the Executive Director may place the employee on administrative leave with pay as provided for in these Personnel Policies.

The Notice of Contemplated Action shall be delivered personally when feasible. The employee must sign the Notice of Contemplated Action to acknowledge receipt. A copy, signed by the employee, will be placed in the employees personnel file. If the employee refuses to sign the acknowledgment, the supervisor shall so indicate on the written reprimand and then forward it to the Human Resources Manager for inclusion in the employee's personnel file. If the Notice of Final Action cannot reasonably be delivered to the employee personally, the supervisor shall send the original by certified mail, with return receipt requested, to the employees last address on record. In this case, a copy of the Notice of Contemplated Action shall also be forwarded to the Human Resources Manager for inclusion in the employees personnel file.

**25.3.2 Pre-Disciplinary Hearing.** A pre-disciplinary hearing is not a full evidentiary hearing. Instead, it is an informal opportunity for the employee to present his/her side of the story. It is an initial check against mistaken decisions. During the pre-disciplinary

hearing, the Executive Director or designee will essentially determine whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed level of discipline.

At the pre-disciplinary hearing, the Executive Director, supervisor and/or their designee will orally advise the employee of the alleged misconduct and the proposed disciplinary action. The employee shall have the right to respond orally or in writing. The employee may, for example, refute the factual allegations, disagree that the conduct at issue constitutes a violation of policy, and/or assert that the contemplated discipline is too severe under the circumstances. The employee may have a representative of choice present at the hearing. The MRCOG will hold the pre-disciplinary hearing within 10 business days of the date of issuance of the Notice of Contemplated Action, unless both parties agree to extend this time frame.

**25.3.3 Notice of Final Action.** The MRCOG shall issue a Notice of Final Action within 10 calendar days following the pre-disciplinary hearing. A final disciplinary decision will be made only after consideration of the employee's response, unless the employee fails or refuses to respond. The Notice of Final Action must, at a minimum:

- A. Document the date, time and place the pre-disciplinary hearing was held;
- B. Set forth the factual basis for the disciplinary action;
- C. Identify the policies, regulations or directives that were violated;
- D. Briefly summarize the employee's prior disciplinary action, if any;
- E. Set forth goals for improvement and a time frame to accomplish these goals, if applicable;
- F. Specify the disciplinary action to be taken;
- G. Set forth a statement of the potential disciplinary consequences if misconduct does not cease or performance does not improve, if applicable;
- H. Specify the effective date of the dismissal, demotion, or suspension without pay;
- I. Inform the classified, full-time or classified, part-time employee that a written reprimand may be grieved pursuant to the MRCOG's Non-disciplinary Concerns policy or that a suspension without pay, demotion or dismissal may be appealed pursuant to the MRCOG's appeal policies, as applicable; and
- J. The time frame for the employee to file a grievance or appeal, as applicable.

The Notice of Final Action shall be delivered personally when feasible. The employee must sign the Notice of Final Action to acknowledge receipt. A copy, signed by the employee, will be placed in the employee's personnel file. If the employee refuses to sign the acknowledgment, the supervisor shall so indicate on the Notice of Final Action and then forward it to the Human Resources Manager for inclusion in the employee's personnel file. If the Notice of Final Action cannot reasonably be delivered to the employee personally, the supervisor shall send the original by certified mail, with return receipt requested, to the employee's last address on record. In this case, a copy of the Notice of Final Action shall also be forwarded to the Human Resources Manager for inclusion in the employee's personnel file.

## **SECTION 26. APPEAL FROM SUSPENSION, DEMOTION AND DISMISSAL**

This appeal procedure offers a process by which a classified employee may appeal a suspension without pay, demotion for disciplinary reasons, or dismissal. The entire appeal process shall operate without discrimination, restraint, coercion or reprisal on the part of any supervisor or employee.

The filing of an appeal, or the intention to file, does not relieve any employee in any way of his or her responsibility to perform any and all of his or her assigned duties promptly, professionally, efficiently and completely.

### **26.1 *Hearing Officer***

A hearing officer shall be an attorney licensed to practice law in New Mexico or a person highly experienced in employer-employee relations or personnel administration. The hearing officer shall be subject to the Code of Judicial Conduct, Rules 21-001, et seq., NMRA 1998, and as it might be subsequently amended, as it applies to probate, part-time magistrate judges and municipal judges.

### **26.2 *Appeal Procedure***

**26.2.1** An employee may appeal the discipline identified in Section 24 within 10 calendar days of the disciplinary decision by submitting a written statement to the Executive Director containing the following information:

- (A) Employee's name;
- (B) Employee's title;
- (C) Employee's immediate supervisor;
- (D) Discipline imposed and a brief summary of the offense for which the discipline was imposed; and
- (E) The reason the employee disagrees with the discipline imposed.

**26.2.2** Within 5 days of receiving the employee's appeal notice, the Executive Director will schedule a meeting with the employee to discuss the circumstances of the discipline and explore whether MRCOG and the employee can reach an amicable resolution. If this meeting does not resolve the appeal, the Executive Director will select a neutral hearing officer within 10 work days after the meeting. If the Executive Director is the individual who imposed the final discipline, the Board Chair shall meet with the employee as provided in this Section and, if the meeting does not resolve the appeal, select a neutral hearing officer.

**26.2.3** Within 10 days of receiving the appointment, the Hearing Officer will confer with the MRCOG designee and the employee and announce a mutually acceptable date for a hearing. The Hearing Officer will conduct an evidentiary hearing at which the parties may present the testimony of witnesses and documentary evidence. The Hearing Officer has

the authority to administer oaths, subpoena witnesses and compel submission of documents pertinent to an appeal. An audio recording of the hearing will be made.

As soon as possible but no more than 20 calendar days after concluding a hearing, the Hearing Officer shall prepare a report containing a summary of the evidence, proposed findings of fact and conclusions and transmit it to the Executive Director and the subject employee. The Hearing Officer may agree with, reverse or modify the decision to impose discipline. The Hearing Officer's findings and conclusions are the final level of administrative review. The Board Chair, Executive Director or designee may grant the Hearing Officer an extension in the event it is not feasible for the Hearing Officer to complete the report within 20 days.

**26.2.4** The employee or the MRCOG may appeal the Hearing Officer's decision to District Court within 30 days after the date of the decision.

**26.2.5** An employee's failure to comply with the above provisions, including deadlines will render the appeal null and void.

## **SECTION 27. RESOLUTION OF NONDISCIPLINARY CONCERNS**

The MRCOG strives for a harmonious working environment. Despite everyone's best efforts, disagreements among employees, supervisors and managers occasionally occur. The following procedures provide classified employees with a means to secure, at the lowest possible level, equitable solutions to employee concerns other than those involving discipline. Employees may also use this procedure to appeal a letter of reprimand. A concern raised under this procedure is known as a grievance.

### **27.1 Step One: Meeting with Supervisor**

The employee is required to contact his supervisor within 5 days of the incident of concern. The employee and supervisor will meet within 3 working days to explore ways to resolve the concern informally. Within 3 working days of the completion of the meeting(s), the supervisor shall provide the employee with a letter or e-mail providing a decision, a proposed resolution or advice.

### **27.2 Step Two: Meeting with Supervisor and Human Resources Manager**

If the employee is dissatisfied with the supervisor's determination, the employee will submit a written request to the Human Resources Manager within 5 working days from the date of the supervisor's letter or e-mail, asking for a more thorough review of the circumstances with the Human Resources Manager and other appropriate staff members. Within 3 working days, the Human Resources Manager, supervisor, and appropriate staff will meet with the employee. Within 3 working days following the meeting, the Human Resources Manager will provide the requesting employee with a decision that is documented in a letter or e-mail.



### **27.3 Step Three: Meeting with Executive Director**

**27.3.1** If the employee considers the previous attempts to resolve the problem unsatisfactory, the employee may appeal the matter to the Executive Director by submitting a written request within 3 working days of date of the Human Resources Manager's determination.

**27.3.2** The Executive Director or designee may schedule a meeting with the affected employee to review his/her issue of concern. Within 5 working days of receiving the employee's appeal, the Executive Director will notify the employee if, and when, a meeting will be held. The Executive Director will make a written determination within 5 working days of the meeting, if held, or of the Executive Director's receipt of the appeal. The Executive Director's decision is final.

**27.4** Supervisory employees who report directly to the Executive Director shall consult with another supervisory employee for steps 1 and 2. For step 3, the supervisory employee may choose the Chair of the Executive Board to make the determination.

**27.5** An employee's failure to comply with the above provisions, including deadlines will render the grievance null and void.

## **28. DISCUSSION OF MRCOG OPERATIONS – WHISTLEBLOWER PROTECTION**

**28.1** No supervisor will prohibit or take any disciplinary or retaliatory action against an employee for reporting or threatening to report an unlawful or improper act as long as there is evidence or a good faith belief to support the allegations. For purposes of this section, an "unlawful or improper act" consists of the following:

**28.1.1** Violation of federal law or regulation, state law or administrative rule, or local law;

**28.1.2** Malfeasance in public office;

**28.1.3** Misuse of public funds; and/or

**28.1.4** Substantial danger to public health and safety.

**28.2** Employees may report such information without giving prior notice to the employee's supervisor or another individual in the employee's direct chain of command.

**28.3** Employees are permitted to provide information to or testify regarding the operations and functions of the MRCOG before a public body as part of an investigation, hearing or inquiry into an unlawful or improper act.

**28.4** Employees may, without fear of retaliation or discipline, object or refuse to participate in an activity, policy or practice that constitutes an unlawful or improper act.

**SECTION 29. EFFECTIVE DATE**

This policy is effective as of the date of the Executive Director's signature.

February 1, 2016

Date

*Dewey V. Cave (Original in HR Office)*

Dewey V. Cave  
Executive Director