

### **300. CONDITIONS OF EMPLOYMENT**

As a condition of employment, employees are required to comply with the provisions of the City of Albuquerque Merit System Ordinance, Labor-Management Relations Ordinance, Conflict of Interest Ordinance, Personnel Rules and Regulations, Executive Orders and Administrative Instructions and all relevant laws, statutes, ordinances, regulations and collective bargaining agreements governing employment with the City of Albuquerque.

Pursuant to the Conflict of Interest Ordinance, Article 3 (R. O. 1994), the Code of Conduct, Section 301, below, shall further govern the conduct of employees and if violated shall be grounds for disciplinary action including, but not limited to, termination, demotion, suspension or reprimand.

Additionally, department directors may promulgate, with the review by the Human Resources Department and approval of the Chief Administrative Officer, Codes of Conduct, rules, regulations and standard operating procedures for employees in their departments, which prescribe standards peculiar and appropriate to the function, and purpose for which the department was created and exists. Departmental Codes of Conduct shall further govern the conduct of employees and, if violated, shall be grounds for disciplinary action including, but not limited to, termination, demotion, suspension or reprimand.

#### **301. CODE OF CONDUCT**

##### **301.1 Duty to the Public *(March 5, 2005)***

The City of Albuquerque is a public service institution. In carrying out their assigned duties and responsibilities, employees must always remember their first obligation is to the general public's safety and well-being. This obligation must be carried out within the framework of federal, state and local laws.

Employees shall serve the public with respect, concern, courtesy and responsiveness, recognizing service to the public is the reason for their employment. Telephone calls, correspondence or other communications should be answered promptly or referred to appropriate individuals for timely action.

It is recognized it is not always possible to fulfill all of the requests of the general public, however, employees are required to handle all requests and inquiries courteously, fairly, impartially, efficiently and effectively.

301.2 Professional Excellence

Employees are encouraged to strive for personal and professional excellence as a means of keeping current on relevant issues and administering the public's business with professional competence, efficiency and effectiveness.

301.3 Standards of Conduct

Employees shall in all instances maintain their conduct at the highest personal and professional standards in order to promote public confidence and trust in the City and public institutions and in a manner that merits the respect and cooperation of co-workers and the community.

Employees shall not use insulting, abusive or offensive language or actions toward the public or co-workers. Ethnic or sexist jokes, slurs and other comments or actions that might embarrass or offend others are prohibited. Employees shall not harass others by making sexual advances or by creating an intimidating or offensive working environment or by making false accusations regarding such conduct. Display of visual materials that may be sexually or racially offensive is also prohibited.

Employees shall not have in their possession during assigned work hours, including lunch periods, in any facility, vehicle or work site, illegal drugs, alcohol, drug paraphernalia, weapons or explosives, unless directly related to their city responsibilities. Additionally, employees may not use any product for other than its intended manufactured use.

Employees are responsible for notifying their immediate supervisor in writing of a conviction, entry of a "no contest" plea or imposition of a sentence if the infraction relates to the position held by the employee. Misdemeanor convictions will be considered based on job relatedness.

301.4 Equal Employment Opportunity

Employees shall comply with the provisions of Title VII of the United States Civil Rights Act of 1964, as amended, the State of New Mexico Human Rights Act, as amended, the City of Albuquerque Human Rights Ordinance and the City of Albuquerque Affirmative Action Plan. While not all inclusive, these laws and the Affirmative Action Plan legitimize the concept of merit, qualifications and performance in selection and career

advancement and prohibit discrimination on the basis of race, color, religion, sex, national origin or ancestry, age, physical or mental disability and Vietnam Era or disabled veteran status, sexual orientation and medical condition.

#### 301.5 Violence in the Workplace

Workplace violence by employees is prohibited. Violent behavior directed toward a City employee by a member of the general public shall not be tolerated.

Prohibited workplace behavior includes intimidation, verbal threats, physical assault, vandalism, arson, sabotage, the unauthorized display, possession or use of weapons in the workplace, jokes or comments regarding violent acts which are reasonably perceived to be a threat, or any other behavior reasonably perceived to be a threat of imminent harm against an employee or member of the general public.

An employee who witnesses or is the subject of prohibited behaviors must report the incident to their immediate supervisor unless the supervisor is the one exhibiting the prohibited behavior, in which case the employee shall report the behavior to the next highest person within the organization.

A supervisor receiving the complaint must conduct an investigation of the incident and initiate appropriate action to eliminate the prohibited behavior. The supervisor shall prepare a written response to the employee reporting the incident. This response shall include an acknowledgment of the employee's complaint, a description of the investigation conducted, and the action that was initiated to eliminate the prohibited behavior.

Employees engaging in any prohibited behavior may be subject to mandatory referral for psychological/psychiatric evaluation, counseling or mediation, arrest and prosecution, and/or disciplinary action up to and including termination from City employment. Refer to applicable Administrative Instructions for further guidance.

#### 301.6 Report of Abuse (March 5, 2005)

During the course of business, employees may become aware of instances of abuse of equipment, facilities, programs, city driving privileges, or other areas of official City business. As employees become aware of these instances, they are to report these events to

their immediate supervisor or directly to their department director. If an employee fails to report such events and it is determined later through an investigation that an employee had knowledge of the situation, the employee may be subject to disciplinary action up to and including termination.

### 301.7 Weapons

It is strictly prohibited for any employee, other than sworn law enforcement officers, to possess firearms (including handguns, regardless of any authorized permit); explosives or dangerous weapons on City premises, in City property or at City sponsored events. City premises include worksites and vehicles (owned, rented or leased), parking garages and parking lots.

The City may conduct searches when there is a reason to believe that a person is in possession of a firearm including handguns, (regardless of any authorized permit), explosives or any other weapon, device, instrument or substance, which in the manner it is used or intended to be used, is capable of producing death or serious bodily injury.

Any violation of this policy, including a refusal to consent to a search, will subject an employee to disciplinary action up to and including termination of employment.

### 301.8 Safety (March 5, 2005)

Employees are responsible for performing assigned duties in the safest possible manner, using all available safety measures and devices to prevent injury to themselves, coworkers or the general public and to report unsafe equipment, materials, or conditions to their supervisor and the Risk Management Division.

Because human dignity and the personal safety of each employee are of utmost importance, dangerous practical jokes, horseplay, and roughhouse activities are prohibited in the workplace.

### 301.9 False Statements/Fraud

No employee shall willfully make any false statement, certificate, mark, rating or report in regard to 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 City or in connection with the work-related conduct of any City employee.

301.10 Bribery, Gifts and Donations

No individual seeking appointment to, or promotion in the service

of the City 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, a test, appointment, proposed appointment, promotion or any personnel action. Payments to licensed employment agencies are exempted.

No reward, favor, gift, or other form of payment in addition to regular compensation and employee benefits shall be received by any employee for the performance or nonperformance of their duties from any vendor, contractor, individual or firm doing business with the City or who can reasonably anticipate doing business with the City in the future, or from any other source having or proposing to have any relationship with the City of Albuquerque.

Nothing in this section shall be construed to prohibit an occasional, nonpecuniary gift, insignificant in value; an award publicly presented in recognition of public service, participation in community events, acts of heroism or for solving of crimes; nor does it apply to 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.

301.11 City Funds

Employees are personally accountable for City money over which they have possession or control. All employees who are in control of City funds must maintain accurate and current records of all such funds. Employees must comply with all policies, practices, and procedures promulgated by the Department of Finance and Administrative Services and approved by the Chief Administrative Officer and in accordance with Generally Accepted Accounting Principles regarding the receipt, recording and disbursement of public monies.

301.12 City Property

Employees are responsible for preventing loss, damage, abuse, misuse or theft of City property or property entrusted to the City including, but not limited to: artifacts, vehicles, equipment, tools,

supplies and City records. All City property should be used only for City business. City property may not be used for personal gain or profit.

Office furniture, fixtures, vehicles and equipment including lockers and storage units are the property of the City or contain property of the City. The City has the right of access to such items at any time as determined necessary by the supervisor.

#### 301.13 City Records and Accounting

All City records, including reports, vouchers, requisitions, payroll and personnel records must be prepared factually and accurately. It is the personal obligation of the employee completing such records as well as the supervisor to ensure that such records are accurate and comply with federal, state, and City record-keeping and accounting requirements.

#### 301.14 Telephone Usage

City telephones are for official business use only and will be used in a professional manner. Abusive, threatening or obscene phone calls are strictly prohibited. Use of City telephones for personal calls during office hours is discouraged. A supervisor may permit the employee to make occasional calls if they do not interfere with the work duties and responsibilities of the employee, departmental operations, performance or services to the public.

Personal use of City telephones for toll or long distance calls is strictly prohibited unless the call is charged to the employee's personal credit card or home telephone. Employees are responsible for ensuring that toll or long distance calls made for legitimate business purposes are appropriately and accurately documented.

#### 301.15 Automated Systems

All automated systems, including electronic mail; Internet usage, software and hardware are for official City business. All users will conduct themselves in a legal, professional and ethical manner. All automated systems are valuable and must be protected from misappropriation, abuse, misuse, theft, fraud, loss and unauthorized use or disposal. Misappropriation of computer time, hardware or software includes, but is not limited to, using a computer to create or run unauthorized jobs, operating a computer in an unauthorized mode or intentionally causing any kind of operational malfunction or failure.

Employees are required to terminate processing from their terminals/PCs using standard log-off procedures when not in use to prevent unauthorized use of such equipment. Employees are required to report violations or suspected violations to their department director or, if the computer is under the control of the Information Systems Division (ISD), to the Chief Information Officer.

Employees shall not use City computer time, hardware or software for any personal gain or profit. Employees are required to comply with all policies, practices, and procedures promulgated by the Department of Finance and Administrative Services and approved by the Chief Administrative Officer regarding the use and security of automated systems.

As used in this section, automated system and/or computer shall mean the City's mainframe computer and peripheral equipment, any terminal or desktop computer, which communicates with a computer, network or mainframe and any standalone personal computers.

#### 301.16 Privileged Information

Employees shall protect privileged information to which they have access in the course of their official duties. Employees or former employees shall not disclose or use confidential information acquired through their employment with the City for the employees or another's personal gain or profit.

#### 301.17 Supervision of Employees (March 5, 2005)

Employees with supervisory duties or responsibilities shall, in all instances, ensure that all supervisory actions comply with the provisions of the Merit System Ordinance, Labor-Management Relations Ordinance, Personnel Rules and Regulations, Administrative Instructions, City Operator's Permit, Substance Abuse Policy, applicable legislation, and relevant judicial/administrative decisions.

#### 301.18 Sales by Employees

Employees are required to direct their attention to their duties and responsibilities during work hours. No employee shall conduct or operate a personal business, which includes promotion, sales, scheduling or any related activity during work hours. This includes the sale of goods or services for profit. Employees may

be allowed to conduct limited sales for fund raising activities during their lunch period or breaks.

301.19 Community Activities

As private citizens, employees may participate in public affairs and community oriented projects as a means of enhancing City

governments' contribution to the well being and quality of life of the citizens of Albuquerque. Employees are responsible for complying with leave policies for activities that occur during scheduled work hours.

301.20 Direct Deposit

All newly hired employees and reinstated employees are required to receive all employment wages through direct deposit. An employee may not begin work prior to complying with this requirement.

302. REGULAR WORK HOURS

Employees will perform their work in a responsible manner, observing scheduled work hours and complying with City policy governing paid and unpaid leave of absence. Employees are further responsible for complying with City policy concerning sick and vacation leave usage.

The department director shall specify the working time of their employees.

302.1 Lunch Periods/Breaks

Lunch periods are usually one (1) hour, and breaks, fifteen (15) minutes, one (1) break period permitted in the first half of the day worked and one (1) in the second half of the day worked. Supervisors shall be responsible for scheduling and may limit breaks if, in their opinion, continuous work is required because of an emergency or unusual condition. An unpaid lunch break of at least thirty (30) minutes will be provided. In the event a non-exempt employee is required to work during their lunch period, this time will be compensated in accordance with the Fair Labor Standards Act (FLSA). Lunch periods and breaks may not be accumulated and used at other times or for other purposes.

302.2 Overtime Work

As a condition of employment, employees may be required to

work overtime. Overtime work for City employees is generally discouraged, however when overtime is required for non-exempt employees, compensation must be in accordance with the Fair Labor Standards Act (FLSA) and any applicable collective bargaining agreement.

A non-exempt employee shall not work more than the regularly scheduled forty (40) hour workweek without prior approval of the department director or immediate supervisor as designated by the

director. Working overtime without prior approval is considered just cause for disciplinary action up to and including termination.

In the absence of any collective bargaining agreement concerning method of payment, payment may be in the form of cash or compensatory time, which is limited to a maximum accrual of sixty (60) hours. All accrued compensatory time must be utilized within 180 days of accrual. If not used the balance must be paid to the employee on the next regularly scheduled payroll.

303. WITNESSES/GRIEVANCE/ JUDICIAL PROCEEDINGS

As a condition of employment or continued employment, employees may be required to appear as witnesses in grievance hearings and/or as witnesses for the City in administrative or judicial proceedings as directed by City administrative staff. This includes, but is not limited to, cooperating with City officials and insurers of the City in any claim, whether for civil damages or other relief, brought by or against the City. Employees are required to cooperate in City investigations and in efforts to recover damages, benefits, settlements or any court or administrative action relating to injury time or Workers' Compensation claims. Refusal to cooperate is considered just cause for disciplinary action up to and including termination.

Employees called as witnesses, related to their employment, during work hours shall be paid at their regular rate. Employees will be required to return to work when they are no longer needed as witnesses. All witness fees received by employees must be remitted to the City if called as a witness during work hours.

Employees who are parties to or called as witnesses in administrative or judicial proceedings unrelated to their employment or official capacity with the City must submit a Request for Leave of Absence form specifying vacation or leave without pay to their immediate supervisor with a copy of the order to appear. Under this condition, employees are not required to return witness fees to the City.

304. LIGHT DUTY/MODIFIED WORK

The Light Duty/Modified Work program applies only to on-the-job injuries.

When a work related injury has occurred and the Employee Health Clinic has determined the employee is unable to perform all of the essential functions of the job due to a work related injury the employee shall participate in the Light Duty Program. Departments will be required to

participate in the Light Duty/Modified Work program as directed by Risk Management and the Human Resources Director.

305. PROBATIONARY PERIOD

As a condition of employment, classified employees must serve a probationary period. An employee serving a probationary period does not have a legitimate entitlement to continued employment and may be terminated for any or no reason.

A probationary period shall be utilized by the supervisor to closely evaluate the employee's work to provide guidance and direction to the employee to achieve satisfactory performance in their new position.

For police officers, Fire Fighters, and correction officers, the probationary period shall be twelve (12) months immediately following the original appointment date or from the date of graduation from the police academy or fire academy, whichever is later, whether or not such appointee has been previously employed by the city.

The probationary period for all other classified employees shall be for a period of six (6) months immediately following the original classified appointment date. However, if a non-public safety employee that has completed probation accepts a new position that requires the carrying of a weapon the employee will be required to satisfactorily complete a twelve (12) month **evaluation period**. If the employee does not successfully complete the **evaluation period** the employee will be placed in a comparable position for which they qualify.

At any time during the probationary period an employee may be dismissed for any reason, which is not prohibited by law. The respective department director will document the completion of the probationary period by submitting a personnel action form and a performance evaluation. Failure to submit the personnel action form shall constitute dismissal of the employee. Upon the supervisor's recommendation, the department

director may extend the probationary period, one time, for up to a maximum of sixty (60) days.

An employee serving in a probationary period is not entitled to certain rights and benefits as provided for in other sections of the Personnel Rules and Regulations.

306. CATEGORIES OF EMPLOYMENT

306.1 Classified Employees

**Classified employees** are City employees who are entitled to all the rights and benefits described in these Regulations and guaranteed by the Merit System Ordinance and the Labor-Management Relations Ordinance.

306.2 Unclassified Employees

**Unclassified employees** are employees at will and serve at the discretion of the Chief Administrative Officer, except for unclassified City Council staff. Such employees have no property interest in continued employment and may be terminated for any or no reason.

Unclassified employees shall be entitled to all of the rights and benefits to which classified employees are entitled except for the rights of disciplinary actions, the grievance resolution procedure, appeals and layoff.

The unclassified service shall be comprised of the following:

- A. The Chief Administrative Officer and Deputy Chief Administrative Officers, assistants to the Chief Administrative Officer and the secretary to the Chief Administrative Officer;
- B. Assistants to the Mayor and secretary to the Mayor;
- C. The City's Public Information Officer;
- D. The City Attorney, Assistant City Attorneys, City Hearing Officer, City Clerk/Recorder, administrative heads of departments or special programs, physicians, veterinarians, the Director of Internal Audit;
- E. Seasonal employees;

- F. Part-time employees working less than twenty (20) hours per week;
- G. Administrative heads of agencies or special programs sponsored by the City under Federal or State programs and defined as unclassified by the Chief Administrative Officer;
- H. The Director of Council Services and the Attorney for the Council; and
- I. Any position designated as unclassified by the Chief Administrative Officer.

306.3 Temporary Employees

A **temporary** employee is one who is given a termination date at the time of appointment and whose length of service may not exceed two (2) years. Temporary employees shall be terminated two (2) years from the date of hire. Temporary employees are not entitled to any of the rights and benefits under these rules and regulations except for PERA membership.

306.4 Seasonal Employee

A **seasonal** employee is one who is hired to work no more than nine (9) months in a twelve (12) consecutive month period. Seasonal employees are not entitled to any of the rights and benefits of employment to which other employees are entitled under these rules and regulations.

306.5 Students

A **student** is one who is enrolled in a public or private high school or one who is enrolled at an educational institution whose academic credits would be accepted by a state educational institution and carrying at least twelve (12) credit hours or full time student status during at least eight (8) months in any calendar year.

306.6 Full-time Employee

A **full-time** employee is one who is hired to work at least forty (40) hours per week. Employees in this status may be classified,

unclassified, temporary or seasonal and are entitled to the rights and benefits afforded the specific category of employment as described above.

306.7 Part-time Employee

A **part-time** employee is one who normally works twenty (20) hours or more but less than forty (40) hours per week. Employees in this status may be classified, unclassified, temporary, seasonal or students and are entitled to the rights and benefits afforded the specific category of employment as described above. If applicable, benefits will be prorated accordingly.

A part-time schedule must be either half time (40 hours per pay period) or three-quarter time (60 hours per pay period). Exceptions to this schedule will only be allowed for part-time seasonal or students.

Employees working less than twenty (20) hours per week are unclassified.

306.8 Elected Officials

The Mayor and City Councilors are not part of the classified service and thus are not entitled to the rights afforded classified employees but are eligible for insurance and retirement benefits.

306.9 Board and Commission Members

Members of boards, commissions and authorities are not employees of the City and are not entitled to the rights and benefits afforded employees under these rules and regulations.

307. CHANGE IN EMPLOYMENT

307.1 Completion of Probation

Within fifteen (15) work days before an employee is due to complete the probationary period the department director must submit to the Human Resources Department a performance evaluation and a personnel action form, with an effective date, indicating a change in status of the employee as follows:

- A. Satisfactory completion of the probationary period resulting in a change from probationary to non-probationary; or
- B. Extension of the probationary period for a maximum of sixty (60) days, such extension may only be requested one time; or
- C. Termination of the probationary employee.

307.2 Transfer or Promotion

Employee movement between pay plans, except movement into a management pay plan (M and I series) will be considered a transfer. Employee advancement into higher graded positions within the same pay plan and employee advancement into management positions may be considered a promotion. An employee may initiate a transfer or promotion by applying for a vacant position. A probationary employee who accepts a transfer or promotion to a new position must complete a full probationary period in the new position.

307.3 Position Reviews

The department director with the approval of the Chief

Administrative Officer may request the Human Resources Director review the classification of a position.

If the review shows a significant change in the essential functions it will result in the reclassification of the position. The Human Resources Department will submit a recommendation to the Chief Administrative Officer on the reclassification action. There will be no reorganizations or additional permanent duties assigned to an employee, that would result in an upgrade, until the position review has been finalized and approved by the Chief Administrative Officer. The above procedures also apply to vacant positions.

Actions relating to the position review process are not grievable.

307.4 Administrative Transfers

Department directors may transfer an employee administratively to any position within their department and within the same category of employment and grade provided the employee is qualified for the position. The Chief Administrative Officer may transfer an employee administratively to any position within the City provided

the employee is qualified.

307.5 Return to Previous Position

Employees who voluntarily transfer or are promoted to another City position may be transferred back to their former position if:

A. Their written request is received by the previous

department director no more than thirty (30) days after the date of transfer; and

- B. Their former position remains vacant; and
- C. The department director approves the return to the former position; and
- D. A personnel action form is submitted to the Human Resources Department.

Any compensation adjustments made as a result of a transfer or promotion will be reversed upon the return to the previous position. Disapproval of a request to return to a previous position is not grievable.

### 307.6 Layoff

Layoff is defined as the involuntary separation of classified, non-probationary employees from the service of the City as a result of the abolishment of a position, program elimination or lack of funds. Probationary, unclassified, temporary, seasonal or students are not eligible for layoff privileges.

The Chief Administrative Officer and the Director of the Human Resources Department are responsible for approving all layoffs and offering transfers or placement offers to employees facing layoff. Employees in layoff status will be terminated one (1) year from the effective date of layoff if they have not been placed or upon refusal to accept an offer of placement into a position of equal grade or comparable pay.

Prior to the layoff of a classified, non-probationary employee, temporary, seasonal or students may be terminated.

In the event a layoff is necessary, the Chief Administrative Officer will issue an instructional memorandum outlining the procedures for developing and implementing the layoff plan, which must be based on seniority principles and collective bargaining agreements. In this plan department directors are responsible for identifying positions for elimination by job code.

When two (2) or more employees are in the same job code in the same department, the determination as to layoff will be made in the following order:

- A. The employee with the shortest length of continuous, uninterrupted service with the City;

- B. If this is equal, the employee with the shortest length of continuous, uninterrupted service with the department;
- C. If this is equal, the employee with the shortest length of continuous, uninterrupted service in the current job code;
- D. If this is equal, the affected employees shall draw lots.

When two (2) or more employees in layoff status are qualified for the same position, offers of placement will be made on the basis of length of continuous, uninterrupted service with the City. If this is equal, the last person to be laid off will be the first person placed.

Layoff provisions in a collective bargaining agreement will supercede this subsection.

Employees in layoff status placed in an equal position will be compensated in accordance with Section 708. Employees in layoff status placed in a lower position will be compensated in accordance with Section 706.

#### 307.7 Physical Layoff *(August 30, 2001)*

Physical layoff is the separation of a classified, non-probationary employee from the service of the City upon the certification of a licensed physician or a licensed psychologist indicating the employee is physically or mentally incapable of performing the duties of the position. An employee in physical layoff may return to work within one year of the effective date of physical layoff. The employee will be placed in a vacant position, for which they qualify, and is of equal or lesser grade or comparable pay to the employee's previous position.

To be eligible for physical layoff, an employee must have twelve (12) months of continuous uninterrupted active employment immediately prior to the effective date of physical layoff. Unclassified, temporary, seasonal or students are not eligible for physical layoff. Before transferring to physical layoff employees must exhaust sick leave and will be paid accrued vacation or compensatory leave in a lump sum.

Before an employee is transferred into physical layoff, the City will determine whether the employee has a disability as defined by the American with Disabilities Act (ADA). If so, the City will engage in an interactive process with the employee to determine whether a reasonable accommodation can be made in the employee's existing position or transfer to another position.

Employees unable to return to work after exhausting sick and FMLA leave will be transferred to physical layoff at the end of an FMLA leave without pay period. However, the effective date of transfer will be the date the paid leave was exhausted. When an employee is transferred to physical layoff, the City will provide notice to the employee of his or her rights under this section as well as the employee's obligation to keep the City informed of his or her physical or mental condition during the physical layoff period.

An employee in physical layoff initiates the return to work process by notifying the Human Resources Department that his or her personal physician has released him or her to return to work. A City doctor must also certify that the employee has reached

maximum medical improvement and may return to work. A City doctor must also certify that the employee has reached minimum

medical improvement and any return to work. The Human Resources Department will then attempt to locate a position of equal or lesser grade or comparable pay to the employee's previous position. If there is a question whether the employee is physically or mentally able to perform the essential duties of an identified position, a City doctor, after consultation with the employee's personal physician, must certify that the employee is able to perform all of the essential functions of the position. If the physician determines that the employee cannot perform the essential functions, the City's ADA Coordinator will determine if the employee is disabled. If it is determined that the employee is disabled as defined by the ADA, the ADA Coordinator will engage in an interactive process with the employee to determine if a reasonable accommodation would enable the employee to perform the essential functions of that position or another position.

Employees in physical layoff status placed in an equal position will be compensated in accordance with Section 709. Employees in physical layoff status placed in a lower position will be compensated in accordance with Section 706.

Employees on physical layoff status will be terminated one (1) year from the effective date of physical layoff or upon refusal to accept an offer of placement into a position of equal grade or comparable pay.

Employees in physical layoff are not eligible for donated leave or

hardship leave.

307.8 Underfill

An employee or applicant may be selected to underfill a position provided the Human Resources Department and the hiring departments agree the most suitable candidate was selected. Underfill means the candidate selected lacks a specific requirement for the position.

The Human Resources Department will review the qualifications of an employee who is being considered for underfill to determine the conditions of underfill and the qualifications that must be met, time requirements, levels of completion and compensation. The conditions of underfill must be specified in writing by the Human Resources Department prior to the effective date and must be provided to the hiring department and employee. The Human Resources Director will submit a recommendation to the Chief

Administrative Officer for approval on a case-by-case basis.

Failure to comply with the conditions of underfill within the specified time frame up to a six (6) month period is just cause for termination of employment.

307.9 Temporary Duplicate Positions

Temporary duplicate positions may be created for a period not to exceed six (6) months only upon the written notification of resignation or retirement of an employee. The department director must request approval from the Chief Administrative Officer to create a temporary duplicate position to ensure continuity of service.

The classified position held by the retiring/resigning employee will be advertised and filled in accordance with City procedures.

308. AMERICANS WITH DISABILITY ACT (ADA)

The ADA prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment.

Employment discrimination is prohibited against “qualified individuals with disabilities.” A qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position and can perform the essential functions of the position with or without reasonable accommodation.

The City of Albuquerque is only required to accommodate a “known” disability of a qualified applicant or employee. An individual with a disability who desires a reasonable accommodation should complete and submit a Request for Accommodation form to the Human Resources Department.

309. MEDICAL EVALUATIONS, EXAMINATIONS AND ALCOHOL/DRUG TESTS

309.1 Examinations (March 5, 2005)

As a condition of employment or continued employment, City employees or applicants may be required to take a medical or psychological examination or an alcohol/drug test. Refusal of the applicant or employee to complete the examination/test as directed by the health care professional or to provide medical records is just cause for withdrawing the employment offer or for disciplinary action up to and including termination. The Human Resources

Director will determine employees/positions that will be subject to medical and psychological examinations. The Human Resources Director in accordance with the Substance Abuse Policy Manual will also determine required alcohol/drug tests.

Examinations or tests may be conducted for the following reasons:

- A. Prior to employment; or
- B. Prior to an employee being transferred or promoted from one position to another; or
- C. When requested by the Fleet Safety Officer, Risk Manager, or department director, who has reason to believe the employee is not physically or mentally capable of  
  
performing essential job duties (in-service physical); or
- D. In the event of any injury, illness or surgical treatment of an employee; or

- E. When an employee has been on leave with or without pay as a result of a medical condition for more than five (5) days; or
- F. Any purpose deemed necessary by the Chief Administrative Officer or Director of Human Resources.

309.2 Scheduling Examinations

All requests for medical or psychological examinations, except for Workers' Compensation claims, must be coordinated between the employee/applicant, the hiring department, Employee Health Clinic and the Human Resources Department. The Employee Health Clinic will be responsible for scheduling drug/alcohol testing.

309.3 Alcohol and Drug Testing

Applicants for City 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. All employees are subject to reasonable suspicion drug/alcohol testing. It shall be the responsibility of the Human Resources Director to determine which positions are safety sensitive and to notify the affected employees of their status.

There shall be five (5) pools of safety sensitive employees from which employees can be randomly selected. Each pool shall be maintained separately and no employee may be placed in more than one pool except as noted in letter D below. The pools shall be designated as follows:

- A. Employees designated as safety-sensitive by Federal Transit Authority regulations;
- B. Employees required to operate a commercial class vehicle (other than Federal Transit Authority designated employees);
- C. Public safety employees;
- D. Police officers whose primary duty is the detection and suppression of drug law violations, who shall be the only employees whose names appear in two (2) pools; and

- E. All other employees whose position has been designated safety-sensitive by the Human Resources Director.

Refer to the Substance Abuse Policy Manual for further guidance.

309.4 Medical or Psychological Examinations Due to Personal Injury/Illness

Should a medical or psychological exam reveal an employee is unable to perform the essential functions of the job due to an **off the job** illness or injury the employee will be placed on sick leave. Upon exhausting accrued sick leave, the employee will be placed on physical layoff.

If the employee's personal physician releases the employee with permanent restrictions and the employee has a disability as defined by the Americans with Disabilities Act (ADA) the employee may request an accommodation.

Prior to returning to work the employee is required to submit to the Human Resources Department a release from their personal physician. The Human Resources Department will also refer the employee to the City Employee Health Clinic for a return to work clearance and certification that the employee is able to perform the essential functions of the job.

If an employee is released by their personal physician with temporary restrictions, that do not exceed two (2) weeks, the department director may assign temporary alternate tasks if such are available. If such tasks are not available the employee will not be allowed to return to work and will be placed on sick leave if an accrued balance exists otherwise on Leave Without Pay.

Police officers and firefighters released to return to work by their personal physician with temporary restrictions will be referred to

their department chief to determine if an alternate temporary assignment is available. Such temporary assignment may not exceed three (3) months.

309.5 Appeal of Failure to Pass the Examination

The City will notify applicants or employees who fail the City's

medical or psychological examinations. Applicants or employees may appeal the failure of a medical or psychological examination, except for drug and alcohol testing, through the following

procedures:

- A. The Human Resources Department shall provide applicants or employees with the physical requirements (essential job functions) for the position in question.
- B. Employees or applicants must seek a second medical opinion at their own expense from a licensed physician of their choosing. The licensed physician selected by the applicant or employee shall use the physical requirements provided by the Human Resources Department to determine if the applicant or employee meets the physical requirements of the job. This second medical opinion will be presented in writing to the Director of Human Resources.
- C. In all instances where the City physician's report and the second medical opinion are in conflict, the Human Resources Department shall seek a third medical opinion from a physician selected by the City.
- D. After receipt of the third medical opinion, the Director of Human Resources shall forward all documentation with a recommendation to the Chief Administrative Officer who will make the final decision regarding employment.
- E. The Human Resources Director will notify the applicant or employee of the final decision.

Failure to pass a medical or psychological examination is not grievable.

### 310. EMPLOYMENT OUTSIDE THE CITY SERVICE

All employees must obtain the written permission of the department director and concurrence of the Human Resources Director allowing them to engage in outside employment. No employee who is receiving Workers' Compensation total disability payments, hardship leave or donated leave shall engage in outside employment.

Employees who are unable to return to their current position or waiting to be reassigned by the Human Resources Department may engage in outside employment with the concurrence of the Human Resources Department.

#### 310.1 Authorization Required for Outside Employment

The department director and the Human Resources Director will

assure the following provisions are met:

- A. The duties or services of the proposed outside employment will not create a conflict of interest for the employee or assigned subordinates while serving in an official capacity with the City; and
- B. There is no conflict between the employee's official duties with the City and the proposed outside employment; and
- C. The proposed outside employment will not defame, embarrass or discredit the City; and
- D. The employee has a satisfactory work record and there is a reasonable assumption that it will continue if approved; and
- E. The employee's sick leave usage, excluding FMLA absences, does not reflect abuse; and
- F. The Human Resources Director may authorize other provisions as necessary.

#### 310.2 Approval of Outside Employment

Outside employment may be authorized for a period up to one (1) year and must be approved on a year-to-year basis. Requests must be submitted prior to engaging in outside employment and renewed in January of each year.

Employees approved for outside employment may not work more than a total of sixty (60) hours per week for City service and outside employment combined.

City employees performing work for the City outside their normal duties may not be considered an independent contractor and all such work shall be paid through the normal payroll process.

#### 310.3 Rescision of Outside Employment Approval

The department director with the concurrence of the Human Resources Director may rescind the authorization for outside employment if such employment has a negative impact on the employee's job performance. This action is not subject to a

grievance.

310.4 Expert Witnesses/Trainers

Requests for a City employee to appear as an expert witness or serve as a trainer, presenter, speaker or panelist must receive the written approval of the department director or Chief Administrative Officer. Employees must conduct themselves at the highest personal and professional standard as they are representing the City of Albuquerque during these engagements.

If this service occurs on City time or at City expense, a request for leave must be approved and will be charged to work off site. In this instance all compensation paid to the employee must be remitted to the City Treasurer through their department.

If the employee elects to utilize vacation time and assumes all related expenses, the employee may retain any compensation/reimbursement.

311. PROHIBITIONS

Violation of any of the following sections is considered just cause for disciplinary action up to and including termination.

311.1 Alcohol/Drug Possession and Consumption

As a condition of employment, consumption, possession, sale, purchase and/or transfer of illegal drugs or drug paraphernalia by City employees are strictly prohibited. Consumption of alcohol by City employees is prohibited in any facility, vehicle or work site (owned, leased or rented) during assigned work hours including lunch periods and breaks.

A. If an employee uses prescription drugs it must be as directed by their physician while nonprescription drugs should be used in accordance with the recommended dosage. All employees, especially safety sensitive, must advise their supervisor if the use of such drugs may affect their ability to perform work duties safely and effectively. In this instance employees shall be required to provide proof of lawful prescription and/or a statement from the employee's personal physician indicating the employee's ability to perform the essential job functions while under the influence of the prescribed drug(s). Observation by the supervisor of abnormal behavior may result in a reasonable

suspicion alcohol/drug test.

- B. Employees are responsible for notifying their immediate supervisor in writing of a conviction, entry of a "no contest" plea or imposition of sentence, including the loss of a driver's license, for illegal drugs or alcohol offenses.
- C. No employee will report to work, perform work, visit a City work site, City office or City facility (owned, rented or leased) while under the influence of alcohol or the presence of illegal drugs in their system. Employees suspected of being under the influence of alcohol or illegal drugs during assigned work hours shall be subject to a reasonable suspicion alcohol/drug test.

Violation of these provisions shall be grounds for denial, suspension or revocation of any City-issued driver's permit to operate a motor vehicle or hazardous machinery and is considered just cause for disciplinary action up to and including termination. Refusal to undergo any test required under this regulation or applicable City policy is considered a positive test and a direct act of insubordination and will result in termination.

#### 311.2 Employment of Relatives

City employees may not directly supervise, control or influence the work or employment status of a relative or the affairs of the organizational unit in which the relative is employed. The term "**relative**" includes spouse, 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 a domestic partner and the mother, father, brother, sister, child, stepchild, grandparents or grandchild of the domestic partner.

#### 311.3 Political Activities

No person shall engage in political activity that diminishes the integrity, efficiency or discipline of the City service. No employee will participate in the following types of activity:

- A. Use of one's position or status to influence the support of other officials or employees of the City for or against any candidate or issue in any election or use of political activity to influence the employee's position or status within City government;

provided, however, that nothing herein shall deny the right of

officials or employees of the City to express their views on any issue.

- B. Be a candidate for or hold an elective office of the State of New Mexico or any of its political subdivisions.

Employees should refer to applicable Administrative Instructions for additional prohibited and permitted politically related activities.

#### 311.4 Hatch Act Provisions

City employees whose principal employment is in connection with an activity financed in whole or in part by federal loans or grants made by the United States or a Federal agency are required to comply with the provisions of the Hatch Act.

These employees may not:

- A. Use their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office;
- B. Directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes;
- C. Be a candidate for public elective office in a partisan election.

#### 311.5 Union Activity

Employees are free to choose any representative employee organization or union. No employee shall be intimidated, coerced, threatened or pressured into joining or not joining any organization or union. No union representative may interrupt or interfere with the normal conduct of City business. Arrangements must be made with the employee in advance to meet during lunch periods or breaks. Formal requests for on-site visits must be cleared through the supervisor or work site manager.

If the provisions of fair share are met as required in the City regulations, employees covered by a collective bargaining agreement will be required to pay an agency fee.

311.6 Sales Representatives

Because City employees must direct their attention to their work responsibilities during work hours, no sales representatives shall solicit or provide information to City employees on City property during work hours concerning any product or service unconnected with the employee's work responsibilities. No City employee shall make arrangements for or with sales representatives to solicit or provide information to City employees as private customers. No employee shall accept any gratuity from a sales representative or make arrangements for or with a sales representative to solicit or provide information to other City employees as private customers.

311.7 Conflict of Interest

No employee shall violate any provision of the City Conflict of Interest Ordinance (3-3-5, R.O., 1994) or Code of Conduct promulgated pursuant to that Ordinance, including, but not limited to, the following:

- A. Employees shall disqualify themselves from participating in any official act directly affecting a business in which they have a financial interest. Employees shall not acquire a financial interest at a time when they believe or have reason to believe that it will be directly affected by their official act.
- B. All employees who have a financial interest which they believe, or have reason to believe, may be affected by an official act taken within the scope of their employment, shall disclose the precise nature and value of such interest. The disclosures shall be made in writing to the City Clerk at the time the conflict occurs and during the month of January every year thereafter.

Additionally, it shall be the duty of employees to inform their department director of such financial interest at the time they acquire it. The information on the disclosures, except for the valuations attributed to the reported interests, shall be made available by the City Clerk for inspection to any citizen of this State; provided, however, the valuation shall be confidential. The filing of disclosures pursuant to this section is a condition of entering upon and continuing in City employment.

- C. The City shall not enter into any contract with a business nor should the contractor be allowed to subcontract with a business in which an employee has a controlling interest, involving services or property of a value in excess of \$1,000 unless the contract is made after public notice and competitive bidding or the Chief Administrative Officer has issued a written waiver of this prohibition; provided that this subsection does not apply to a contract of employment with the City.
  
- D. A purchase order or contract entered into by the City with a business in which an employee of the City has a controlling interest is void if the employee failed to comply with the provisions of this section prior to the City entering into such contract or purchase order.
  
- E. A former employee shall not within one (1) year after the date of termination from employment represent any person or business in connection with a matter in which the former employee has performed an official act, unless the Chief Administrative Officer consents to such representation. No person or business with which the former employee is associated may knowingly undertake or continue a private representation in such a matter unless:
  - 1. The former City employee is screened from participation in the matter and is apportioned no part of the compensation therefrom; and
  - 2. Written notice is promptly given to the Chief Administrative Officer.

Nothing in this section shall prohibit a former employee from entering into a contract to represent the City in any matter, however all such contracts must be approved by the Chief Administrative Officer.

Violation of any of the provisions of the Conflict of Interest Ordinance by any employee is grounds for disciplinary action, up to and including termination. Violation of any of the provisions of the Conflict of Interest Ordinance by a former employee is a misdemeanor, and, upon conviction the former employee may be sentenced to imprisonment for not more than ninety (90) days or fined not more than \$500.00 or both such imprisonment and fine.

311.8 Occupying Two City Positions

City employees are prohibited from holding two (2) city positions simultaneously.

312. SPECIAL REQUIREMENTS FOR LICENSING AND CERTIFICATES

312.1 Required Licenses and Certificates (March 5, 2005)

Applicants/employees are responsible for meeting all job-related requirements at the time of application, hire, transfer or promotion. This may include licenses, certificates, City Operator's Permit, other permits, degrees and registrations. Employees are responsible for paying any fees in obtaining such licenses, etc. The City will pay any fees necessary to maintain licenses required for the job with the exception of a driver's license.

312.2 Failure to Notify Supervisor of Loss of License/Certification

An employee who has lost a required license or certification is responsible for:

- A. Immediately notifying both their immediate supervisor and their division manager on the first day of employment after such a loss; and
- B. Not performing any work, or related function without the required certification/license.

Failure to fulfill these responsibilities by the employee is considered just cause for disciplinary action up to and including termination of employment with the City.

312.3 Failure to Maintain Required License/Certifications (March 5, 2005)

If an employee, due to their own actions, loses a required license, except as otherwise provided for loss of a City Operator's Permit, or fails to maintain a required certification the following procedures will apply:

- A. The department director will advise the employee that they have up to ninety (90) days from the date of loss to regain the license/certification. If the license/certification is regained the employee will be allowed to return to their former position.

- B. During the ninety (90) day period the department director may assign the employee temporary alternate tasks if such are available for a period not to exceed thirty (30) days. If such tasks are not available the employee will be allowed to utilize their accrued compensatory or vacation balances, if this balance is insufficient, the employee will be placed on Leave without Pay for the remainder of the ninety (90) days.
- C. If at the end of the ninety (90) day period the employee has failed to regain their license/certification, the employee will be transferred to Leave without Pay and the Human Resources Department will attempt to place the employee in a position of equal or lower grade or comparable pay for which they qualify. If such position is not identified within thirty (30) days or upon refusal of the employee to accept an offer of placement into a position of equal or lower grade or comparable pay the employee will be terminated for failure to maintain the required license/certification.

312.4 Loss of City Operator's Permit (March 5, 2005)

If driving is necessary to perform an employee's job, as determined by the Human Resources Department, any driver who has lost their City Operator's Permit under the City Operator's Permit Policy is subject to termination of their employment.

313. PERFORMANCE EVALUATIONS

A performance evaluation system will be used to evaluate the work performance of City employees in the classified service. Performance evaluations are not subject to the grievance procedure.

313.1 Purpose of Performance Evaluation

The purpose of the performance evaluation system is to:

- A. Set performance standards that to the maximum extent feasible permit the accurate evaluation of job performance on the basis of objective criteria related to the job of each employee and position in the classified system; and
- B. Communicate with each employee as to their performance standards and critical elements of the position; and
- C. Provide an opportunity during a specific period of time for the employee to demonstrate improvement in performance.

Employees who continue to demonstrate unacceptable performance may be subject to disciplinary action up to and including termination.

313.2 Frequency of Performance Evaluations

Employees will be evaluated prior to the completion of their probationary period. Immediate supervisors shall evaluate the work performance of an employee annually or more often, as appropriate. Supervisors must also comply with requirements as specified in any grant-funded program.

314. REIMBURSEMENT OF TRAINING COSTS

If the City has expended \$5,000 or more in providing job specific training to an employee who voluntarily terminates during the probationary period or within two (2) years of completing probation, the employee may be required to reimburse the City a percentage of the training costs. The percentage reimbursement will be prorated over the period of employment.