

## ARTICLE 6 – PERSONNEL ACTION

### County proposal June 20

#### **Section 6.1 – Initial and Subsequent Probationary Periods -CCL**

- a) Each new worker shall serve a probationary period of nineteen (19) complete pay periods unless otherwise indicated in the appendices when it shall be twenty-five (25) complete pay periods or 12 months as denoted. Workers who have attained permanent status in a classification and have been appointed to a new classification by appointment from an eligible list or by means of transfer shall serve a subsequent probationary period of 6 months, as outlined in County ordinance, Section A25-191, which shall be counted as thirteen (13) complete pay periods, unless otherwise noted in the appendices. An incomplete pay period served on initial or subsequent probationary appointment shall not be counted as complete pay periods. Upon successful completion of the probationary period, the worker shall be deemed a permanent worker in the classification for which they served the probationary period. A leave of absence without pay shall not be credited toward completion of the worker's probationary period. The parties agree that probationary workers in a classification covered by this Agreement shall have all rights in this Agreement, unless otherwise specified, including full and complete access to the grievance procedure set forth in this Agreement. Consistent with County Charter Section 704(e), probationary workers serving an initial probationary period may not appeal to the Personnel Board, suspensions, demotions, or dismissals. Consistent with 19.1 (b) (2) of this Agreement, probationary workers may not grieve probationary release.
- b) Classified probationary workers and unclassified workers who have not completed a period equal to the probationary period for a comparable classified position shall have the right to request and receive Department/Agency administrative review of disciplinary action taken during the applicable probationary period. Such review must be requested in writing within ten (10) working days of the disciplinary action or it is waived. The department/agency head, or his/her designated representative, shall hear and make a decision in writing which he/she shall issue within sixty (60) business days. The sixty (60) business day period shall not commence until all investigations, administrative proceedings, and litigation related to the worker's employment, as well as discussions between the County and Union about potential resolutions, have concluded. Failure by the County to comply with the sixty (60) business day period shall not result in or serve as a basis for the County being required to reinstate the worker.

Notice of disciplinary action must be served on the worker in person or by certified mail prior to the disciplinary action becoming effective. Notice shall be included in worker's personnel file and a copy sent to the Union and designated Chief Steward, and shall include:

1. Statement of the nature of the disciplinary action.

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[Signature]

2. Effective date of the action.
3. Statement of the cause thereof.
4. Statement in ordinary and concise language of the act or omissions upon which the causes are based.
5. Statement advising the worker of the right to an administrative review of such action and the right to Union representation.

Such worker shall be given five (5) days' notice of discharge, or demotion, or five (5) days pay, except where circumstances require immediate action.

- c) A worker serving a new probation in the classified service, who transferred from the same classification in the unclassified service and had grievance rights pursuant to Section 6.7, shall retain those rights while serving in the new probation period in the classified service.
- d) A worker with underlying permanent status, who is serving a subsequent probationary period, and who is released during the probationary period, shall retain the right to appeal such release to the Personnel Board and the right to return to his/her former class in accordance with Section 6.10. Such worker shall receive a ten (10) working day notice of release except where circumstances require immediate action.

## Section 6.2 – Administrative Investigation

### a) Employee's Rights During Administrative Investigation:

Upon request, an employee has a right to have a representative present at an investigatory meeting with the employer where it is reasonably likely that disciplinary action against that worker may result.

A worker has the right to know the purpose of a meeting with a supervisor, manager, and / or investigator. If asked, the supervisor, manager, and / or investigator must reveal any intent to conduct an investigatory meeting that might lead to discipline of the worker asking, and give that worker sufficient time to secure representation for such meeting. The worker may not unreasonably postpone the meeting to schedule a particular representative but may have to accept the presence of the steward, or union worksite organizer or other representative who can be available within a reasonable period of time.

Regarding any investigatory meeting with a worker that may lead to discipline of that worker, the County shall permit a steward, worksite organizer, or

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representative to be present to assist during such meeting. The representative and worker may confer during breaks, which the investigator shall not unreasonably deny.

Requesting and securing representation is the responsibility of the worker. Supervisors, /Mmanagers, and/or /linvestigators shall not be involved in the selection of a steward, union worksite organizer or other representative.

**b) Employee Rights During Internal Affairs Investigations:**

1. Internal Affairs (IA) will include in its administrative admonishment to a non-peace officer employee who is the subject of the investigation the following, if applicable:
  - The interview will be recorded and the employee will have the right to bring his/her own recording device.
  - The employee will have access to the audio recording of his/her interview if any disciplinary action is contemplated or prior to any further questioning at a subsequent time.
2. When IA is directing the witness not to discuss the investigation directly or indirectly with any other person, the administrative admonishment will include the following:
  - After the witness has been interviewed and IA has concluded its interview of the witness, the witness may speak to the representative of the employee who is the subject of the investigation.

**c) Authority of Investigator**

In a County investigation, the County may authorize a supervisor, manager, and/or internal or external investigator to conduct internal investigations. Workers are required to fully participate and cooperate to the same extent regardless of whom the County designates as its investigator. This section is not a waiver of any representation rights to which the worker is legally entitled.

**Section 6.3 – Philosophy on Discipline**

The intent of progressive discipline is to be corrective in nature and allows for a worker to correct behavior. Ordinarily, the County will use progressive discipline in correcting the behavior of a worker. However, the circumstances of each case dictate the appropriate progressive disciplinary response, and the County reserves the right to skip one or all levels of progressive discipline in appropriate circumstances. The County and the Union agree that the level of discipline recommended for any instance of discipline should take into account the nature and seriousness of the offense as well as the employee's record.

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Coaching, mentoring, verbal counseling or written counseling will identify the expectations of the worker, or identify the issue to be corrected, and give guidance on how to correct the issue and provide for a reasonable period for the worker to make the correction. Coaching and mentoring through the progressive discipline philosophy are not considered discipline nor are they grievable.

Job expectations and/or objectives will be provided to probationary workers. Work performance and behaviors will be evaluated during a worker's probationary period.

Philosophy on discipline shall be excluded from consideration under the grievance procedure outlined Section 19.1.

## **Section 6.4 – Counseling and Unfavorable Reports -CCL**

### **a) Counseling**

In the event that a worker's performance or conduct is unsatisfactory or needs improvement, informal verbal or written counseling shall be provided by the worker's lead or first-line supervisor. Counseling should normally be separate from on-going worksite dialogue and should address performance or conduct which, if not improved, may eventually result in further disciplinary action. Documentation of such counseling shall be given to the worker at the time of the counseling and will not be placed in the worker's personnel file. The County shall attempt to use counseling first, prior to any unfavorable reports being issued, when the situation warrants only a counseling. Counseling should normally take place between the worker and the lead or first-line supervisor only. Should the supervisor or lead be assisted during the counseling, the worker shall have the right to have his/her representative present.

No written counseling and or documentation of verbal counseling shall be used for discipline provided no related personnel action was taken within eighteen (18) months of date of issuance.

Personnel action constitutes any action taken under any one of the following Sections 6.1, 6.4, 6.5, 6.6, 6.7.

### **b) Unfavorable Reports on Performance or Conduct**

If upon such counseling a worker's performance or conduct does not improve and disciplinary action could result, a written report shall be prepared by the supervisor including specific suggestions for corrective action, when the situation allows. A copy shall be given to the worker and a copy filed in his/her personnel file. No unfavorable reports shall be placed in a worker's file unless such report is made within fifteen (15) working days of the County's knowledge of the occurrence or incident which is the subject of this report. The counting of the fifteen (15) working days shall begin at the conclusion of an investigation. Workers shall have the right

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to grieve the factual content and timeliness of such reports and/or attach a written response to the report for inclusion in their personnel file.

**Section 6.5 – Recommended Disciplinary Action - Permanent Classified -CCL**

The County may take disciplinary action for cause against any permanent classified worker by suspension, demotion or discharge by notifying the worker in writing. Notice of recommended disciplinary action must be served on the worker in person or by certified mail. The notice shall not be included in the worker's personnel file. Copies shall be delivered to the Union and designated Chief Steward in person or by regular mail and shall include:

- a) Statement of the nature of the disciplinary action.
- b) Effective date of the action.
- c) Statement of the cause thereof.
- d) Statement in ordinary and concise language of the act or omissions upon which the causes are based.
- e) Statement of the worker's right to respond, either orally at a meeting requested by the worker, or in writing. The opportunity to respond shall normally take place within seven (7) working days following the initial notice of intended action.
- f) In all cases of disciplinary action, the notice shall include a statement advising the worker of the right to appeal to the Personnel Board from such action and the right to Union representation.

**Section 6.6 – Notice of Final Disciplinary Action - Permanent Classified -CCL**

The County may take disciplinary action for cause against any permanent classified worker by suspension, demotion or discharge by notifying the worker in writing. Notice of final disciplinary action shall be served on the worker in person or by certified mail prior to the disciplinary action becoming effective. The notice shall be included in the worker's personnel file. Copies shall be delivered to the Union and the designated Chief Steward in person or by regular mail and shall include:

- a) Statement of the nature of the disciplinary action.
- b) Effective date of the action.
- c) Statement of the cause thereof.

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- d) Statement in ordinary and concise language of the act or omissions upon which the causes are based.
- e) Statement advising the worker of the right to appeal to the Personnel Board from such disciplinary action and the right to Union representation.

Workers serving a suspension of one full pay period or more shall have his/her suspension served over multiple pay periods to avoid the loss of health benefits.

**Section 6.7 – Disciplinary Action – Unclassified Workers -CCL**

Unclassified workers who have completed nineteen (19) complete pay periods or twenty-five (25) complete pay periods (the period being equal to the probationary period for a comparable classified position) may grieve disciplinary action on the grounds that such discipline was not for cause. Such grievance shall comply in all respects with Article 19 of this contract.

Notice of disciplinary action must be served on the worker in person or by certified mail prior to the disciplinary action becoming effective. Notice shall be included in worker's personnel file and a copy sent to the Union in person or by regular mail and designated Chief Steward, and shall include:

- a) Statement of the nature of the disciplinary action.
- b) Effective date of the action.
- c) Statement of the cause thereof.
- d) Statement in ordinary and concise language of the act or omissions upon which the causes are based.
- e) Statement advising the worker of the right to appeal from such action and the right to Union representation.

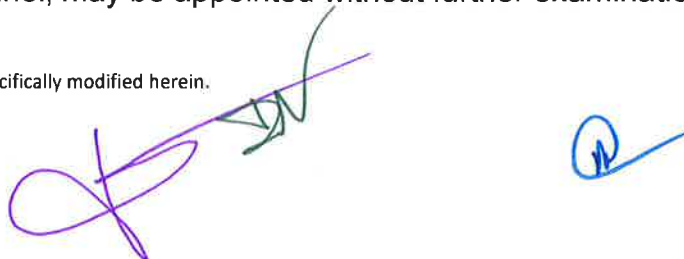
Unclassified workers shall be given five (5) days' notice of discharge or demotion except, where circumstances require immediate action.

Workers serving a suspension of one full pay period or more shall have his/her suspension served over multiple pay periods to avoid the loss of health benefits.

**Section 6.8 – Return to Former Class -CCL**

As an alternative to appointment from any employment list, other than a re-employment list, any current regular worker, upon recommendation of the appointing authority and approval by the Director of Personnel, may be appointed without further examination to a

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position in any class in which regular status had formerly been acquired, or to any related class on a comparable level with the former class. In cases where this procedure is used by a person who has had a break in service of one (1) year or more from the former classification, the salary step in the new range shall be determined under the provisions of Article 7, Section 7.3.

**Section 6.9 – Unclassified Appointment -CCL**

No worker, while holding a position in the Unclassified Service, shall be assigned to or occupy any classified position covered by this Agreement except as provided for under County ordinance section A25-640. Nothing herein shall prevent workers from serving on Boards and Commissions in accordance with County policies and procedures.

**Section 6.10 – Rights Upon Promotion or Transfer to Classified or Unclassified Service -CCL**

Any permanent worker who receives a provisional or probationary promotion, or who is transferred or promoted to a position in the unclassified service shall retain all rights and benefits as a permanent worker of his/her former class while in such provisional, probationary, or unclassified status. These include the right to participate in promotional examinations and the right to return to his/her former class if released while in such status. All such service shall count toward seniority credits in the worker's former class in the event the layoff procedure is involved.

Any permanent worker who receives a provisional promotion, or who is transferred or promoted to a position in the unclassified service, the duration of which is known to be for less than six (6) months, shall be considered to be on leave from his/her permanent position and departments are authorized to make substitute appointments to such vacated positions.

**Section 6.11 – Performance Appraisal Program Union Agreed to County Proposal dated April 14**

The program covers all workers represented by the Union, with the exception of extra help employees unless otherwise required by state or federal regulation or law. With the exception of clerical leads, leads may provide input to supervisors on performance appraisals. Leads will not write or issue performance appraisals on other workers but may be in attendance to observe the issuance and any discussion of the performance appraisal. If the worker objects to the Lead being present, the Lead shall not attend. Performance appraisals shall be conducted during a worker's initial probationary period.

It is agreed that tThe performance appraisals will not be used by the County, the worker or the Union in the disciplinary process or for the purpose of transfers or for the purpose of promotions.

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**Section 6.12 – Personnel Files Union TA on 6/6 to CP dated April 14**

The County shall maintain a personnel file for each worker. The department may also maintain a personnel file for each worker. Workers shall have the right to review both of their personnel files or authorize review by their representative. No adverse material will be inserted into the worker's personnel files without prior notice to the worker. Workers may cause to be placed in their personnel files responses to adverse material inserted therein and a reasonable amount of correspondence originating from other sources directly related to their job performance.

Notices of Recommended Disciplinary Actions including any attachments or disciplinary actions overturned on appeal shall not be retained in a worker's personnel file.

An unfavorable report shall be removed from the worker's personnel file at the end of two (2) years except unfavorable reports involving charges as listed in A25-301(a)(4) Brutality in the performance of duties and (b)(2) Guilty of immoral conduct or a criminal act and provided no additional discipline has been issued during the intervening period.

Materials relating to suspensions which become final will be removed after three (3) years if no other suspensions have occurred during the three (3) year period except those involving charges as listed in A25-301(a)(4) Brutality in the performance of duties and (b)(2) Guilty of immoral conduct or a criminal act.

Unfavorable reports or materials relating to suspensions may be removed from the worker's personnel file earlier than the regular removal schedule through a mutually agreed settlement.

**Section 6.13 – Lateral Transfers -County proposes CCL**

When making a lateral transfer or demotion to another class, an application review by the Personnel Director shall be deemed an appropriate qualifying examination for workers in instances where a qualifying examination is required. If otherwise qualified under this provision and the only prohibition to lateral transfer is the salary of the new class, it shall be deemed to be a lateral transfer if the move from one classification to another does not exceed fifteen percent (15%) upward range movement.

If a worker was moved to a lower classification due to his/her prior class being eliminated, abolished or a worker is laid off from his/her position and was placed on a re-employment list, the transfer band shall be calculated step to step, e.g., step one of the prior classification to step one of the new classification or step five of the prior classification to step five of the new classification. When determining the difference between classifications by using equivalent step to step, the actual step used to calculate the transfer band shall be the step that provides the worker the most benefit. Transfers under

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this provision may be made for a period of eight years from date of movement to the lower classification.

**Section 6.14 – Administrative Transfers -County Modifies CP dated April 14, 2023 on May 9, 2023**

Administrative transfers are based on the needs identified by the Department/Agency. Absent a departmental agreement, seniority (based on days of accrued service) shall be used when it is necessary to transfer a worker within the Department/Agency and between two geographical locations. For the purpose of this section, geographical locations is defined as two different street addresses. The transfer will be conducted as follows:

1. Volunteers who hold a position in the same classification. If there is more than one volunteer, they shall be selected in the order of most seniority (based on days of accrued service absent a departmental agreement).
2. If there are no volunteers, the least senior worker will be assigned. (Based on days of accrued service absent a departmental agreement).

Note: The County will notify the Union in a timely fashion of any planned Administrative Transfers. Upon Union request, the County will meet to determine the group of workers to be designated for the seniority purposes of this section.

3. Transfers necessary to comply with provisions of the Americans with Disabilities Act shall not be governed by this section.
4. Transfers necessary to comply with any other requirements of law as in transfers necessitated by civil rights complaints shall not be governed by this section. However should an investigation of a complaint to EOD or complaints of other civil rights violations not be sustained, a transferred worker will have the right to return to his/her former position and location.
5. This section shall not apply to transfers made pursuant to a reorganization, as defined under Article 21, which are subject to the process described in Article 21.

**Section 6.15 – Minimum Qualification Application -CCL**

Minimum qualifications in job bulletins announcing examinations shall not exceed the minimum qualifications listed in the job specification. A worker shall have the right to take an examination for any County appointment if the worker meets the minimum qualifications/employment standards listed in the job specification, for that appointment, unless specified otherwise in this Agreement and/or in the Merit System Rules. Any

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worker whose application for examination has been disqualified shall be notified in writing. The notification shall include an explanation of why the worker does not meet the minimum qualifications that led to their disqualification. Any worker whose application for examination has been disqualified may make corrections/revisions within the timeframe specified in the notification prior to the examination.

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