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## Chapter 7 – Discipline and Termination of Employment

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### Section I Layoff

#### **Purpose**

The purpose of this policy is to address a reduction or reorganization in workforce.

#### **Scope**

This policy applies to all employees.

#### **A. Definitions**

1. Conditional status period

A twelve (12) month period of evaluation to assess the performance of employees who have successfully completed a 12- month probationary period in a permanent position and have been promoted, demoted, redefined or otherwise had a change in classification. These employees retain grievance rights.

2. Demotion in lieu of layoff

When an employee is moved to a position in a lower band or a lower tier in the same band within the LDSS due to a reduction in force.

3. Emergency employee

Person employed with the understanding that the employment is time-limited to fill an immediate need of the LDSS. Emergency employees may work no more than the full-time-equivalent of 180 work days (consecutive or non-consecutive) in a twelve-month period. An emergency employee does not serve a 12-month probationary period and does not have access to the grievance procedure.

4. Former position

Position held by the employee just prior to layoff.

5. Layoff unit

A group of employees designated for application of layoff that may be defined by various combinations of organizational structure, job classification, program area, and status of position funding.

6. Minimally qualified

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Possession of the necessary knowledge, skills, and abilities (KSAs) and other bona fide job requirements such that the employee can successfully perform the job duties of the position within six months.

7. Placement option

Position available as an alternative to layoff.

8. Probationary employee

A person newly hired or rehired by the LDSS who is serving a twelve-month probationary period. These employees do not have access to the grievance procedure.

9. Recall Rights

Within six months after being laid off, an employee may be placed in a position within the same classification as that held immediately prior to layoff, without competitive recruitment. These recall rights are only valid for the first six months after the layoff occurs. After the six month period, laid off employees may be considered for available positions through competitive recruitment and selection at their current LDSS.

10. Regular Employee

Salaried full-time or part-time employee who has successfully completed a 12-month probationary period, and who has access to the grievance procedure.

11. Restricted Employee

Person employed in a position with limited funding or duration and who cannot be employed in the position longer than the stated duration of the position. Restricted employees serve a 12-month probationary period. These employees do not gain access to the grievance procedure upon completion of the 12-month probationary period.

12. Seniority

One of the criteria used by LDSSs to determine the order in which employees will be impacted by position abolishment. Seniority is calculated based on total continuous LDSS service time computed from the last employment or re-employment with the LDSS implementing the layoff. Computation of service includes approved leaves with pay and without pay. Seniority applies to probationary and regular employees.

13. Temporary employee

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Person employed with the understanding that the employment is of limited duration, typically no longer than a twelve-month period. A temporary employee does not serve a 12-probationary period and does not have access to the grievance procedure.

### 14. Valid vacancy

A vacant, fully funded, full- or part-time, permanent or restricted position that has been designated by the LDSS Board to be filled through placement options or a competitive recruitment and selection process.

### **B. Layoff Procedure**

The LDSS conducts the following process to implement a layoff or reorganization. Refer to the Layoff Matrix for further guidance.

1. Freezes hiring on valid vacancies.
2. Identifies layoff unit(s) to be affected and defines the unit(s) so as to identify the potentially affected positions.
3. Identifies valid vacancies that can be used as placement options.
4. Abolishes vacant positions in the defined layoff unit.
5. Designates for termination any emergency, temporary, or restricted employees in the defined layoff unit regardless of which type of position they occupy.
6. Determines which regular employee(s) will be designated for layoff by using the following factors in order of sequence to rank the employees who have been designated for layoff:
  - a. Review past performance documentation, active written notices, and any disciplinary history.
  - b. Seniority.
7. Provides employees with placement options once they have been identified. An employee must be minimally qualified, in order to be placed in a valid, vacant position. These placement options may result in a demotion, reduction to part-time status, and/or movement to restricted status. A position that would be a promotion for an individual is not a valid placement option.
8. Notifies affected employees of the layoff effective date and provides them with extended health plan coverage notices when it is determined that there are no placement options available for them. Employees should be provided with a minimum of two weeks' notice that they are or may be affected by layoff.

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9. Notifies laid off employees of recall rights Recall rights exist only for a six month period following layoff. The notice should provide laid off employees with instructions on how to exercise their recall rights.
10. Abolishes former positions of employees who have been placed, laid off, or otherwise terminated.
11. Offers recall to employees in the order of their seniority, within the scope of the employees' eligibility for recall.

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### Section II Grievance Procedure

#### Purpose

In accordance with §§ 63.2-219 and 15.2-1507 of the *Code of Virginia*, an LDSS must provide its employees with access to a grievance procedure to seek redress from unfair application of policy, discriminatory or illegal employment practices, disciplinary actions, and/or retaliation.

#### Scope

LDSSs or local boards have the option to adopt a grievance procedure that is either (i) adopted by the locality in which the department or board is located, or in the case of a regional department or board, the grievance procedure adopted by one of its localities in the regional organization; or (ii) approved by the Board. The grievance procedure adopted by the LDSS or local board shall apply to employees, including local directors.

The grievance procedure in this section applies to those LDSSs or local boards that have elected to adopt the grievance procedure approved by the Board. Non-probationary, regular full- and part-time employees, including those employees serving a conditional status period, and local directors have access to this procedure.

#### A. Access to Procedure

1. Except as noted below, employees are provided access to the grievance procedure provided that the grievance is initiated within thirty (30) calendar days from the event or action which gave rise to the grievance. The LDSS Director, as provided in § 63.2-219 of the *Code of Virginia*, has access to this Grievance Procedure.
2. The following employees do not have access to the grievance procedure:
  - a. Probationary employees;
  - b. An employee electing to proceed pursuant to any other state procedure;
  - c. An employee who has voluntarily resigned;
  - d. An employee who has been hired for a term;
  - e. An employee who is exempted under §15.2-1507 of the *Code of Virginia*; and,
  - f. An employee who is in a restricted, seasonal, emergency, or temporary position.



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3. An employee who has been terminated shall not have access to the grievance procedure after the date of termination, except to grieve a removal resulting from formal discipline, unsatisfactory job performance, or an involuntary resignation. As with other grievances, a grievance initiated after termination/resignation must be initiated within thirty (30) calendar days of the dismissal date. Any grievance initiated by an employee prior to separation from the LDSS may, at the employee's option, continue through the grievance procedure following the date of separation.
4. If an employee is denied access to the grievance procedure, the decision may be appealed to the circuit court having jurisdiction in the locality in which the employee is or was employed for a hearing on whether the employee should have access.
5. An employee who utilizes the grievance procedure, or participates in the process, is protected from retaliation for such participation.

### **B. Grievability**

#### 1. Grievable Issues

A complaint or dispute by an employee relating to one of the following is grievable:

- a. Disciplinary actions, including dismissals, disciplinary demotions, and suspensions, provided that dismissals shall be grievable whenever resulting from formal discipline or unsatisfactory job performance.
- b. Unfair or misapplication of personnel policies, procedures, rules, and regulations.
- c. Discrimination on the basis of race, color, creed, religion, marital status, age, disability, national origin, sex, pregnancy, political affiliation, or any other federally prohibited basis.
- d. Acts of retaliation as a result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, waste, gross mismanagement or abuse.
- e. Employees who have been reinstated to employment within the previous six months as a result of a final determination of a grievance who are then affected by termination, layoff, demotion, suspension due to lack of work, reduction in work force, or job abolition may grieve the methods, means and personnel by which work activities are to be carried out.

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If there was a valid business reason for the action and the employee was notified of the reason in writing prior to the effective date of the present adverse action, the LDSS action shall be upheld.

### 2. Nongrievable Issues

The LDSS has the exclusive right to manage the affairs and operations of government. Accordingly, the following actions are nongrievable:

- a. Establishment and revision of wages or salaries, position classification or general benefits.
- b. Work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job content.
- c. Contents of ordinances, statutes or established personnel policies, procedures, rules and regulations.
- d. Failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly.
- e. Methods, means and personnel by which work activities are to be performed.
- f. Relief of employees from duties in emergencies.
- g. Hiring, promotion, transfer, assignment and retention of employees within the local government.

### C. Conciliation or Mediation

Most employee concerns or complaints can be resolved informally through communication between the employee and supervisor. Conciliation affords an employee and supervisor the option to reach a resolution that is acceptable to both of them. Mediation affords an opportunity to seek a resolution through discussions facilitated by a third party. Accordingly, employees are encouraged to take their complaints to the immediate supervisor to seek a resolution. Mediation may be available as an alternative to pursuing a complaint through the grievance procedure. For an employee participating in mediation to retain the right to pursue a grievance, the employee must have an agreement reached with the LDSS allowing an extension of the time period to file a grievance. To avoid any misunderstanding, the agreement should be in writing.

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### D. Management Steps

Employees may pursue grievable issues through the grievance procedure, and supervisors, when requested, are to provide employees with the necessary form and a copy of the grievance procedure.

#### 1. General Provisions

##### a. Time Periods

The use of the grievance procedure requires that certain actions shall be taken within specified periods of time. When used, “work days” means the days that the LDSS is open for business; official office closings and weekends do not count as work days. Full days, on which the individual responsible for taking the required action is on authorized leave time, will not be counted as workdays. If for any reason an action cannot be completed within the time period provided, the employee or the LDSS may request an extension; if an extension is granted it should be put in writing to document the agreement.

##### b. The grievance procedure has three steps. The three grievance steps may not apply in all circumstances, however.

###### (1) Grievances initiated by the Director:

If the grievance is initiated by the Director, the first and second steps of the grievance procedure will be collapse into one step which starts with the local department of social services administrative Board (hereafter “LDSS Board”). After the written grievance of a Director is submitted to the LDSS Board, the LDSS Board provides a written response. If the Director is not satisfied with the written response, he or she may request the third step fact-finding meeting with the LDSS Board. If the Director is not satisfied with the response of the LDSS Board, the Director may appeal to the next management level for an administrative hearing. When a grievance is initiated by the Director, the Director’s responsibilities in this procedure shall be executed by the LDSS Board.

###### (2) Grievances involving discrimination or retaliation:

If the grievance involves discrimination or retaliation by the immediate supervisor, the employee may initiate the grievance with the next management level. If the grievance is initiated with the Director, the first and second steps of the procedure are collapsed and the informal and written initiations of the grievance are with the Director.

#### 2. First Step

##### a. Informal or Oral Initiation of Grievance

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An employee who has a complaint is encouraged to discuss it directly with the immediate supervisor as early as possible. This is an oral, informal initiation of a grievance which can be addressed verbally. Time spent informally attempting to resolve the complaint does not extend the 30-day time limit to initiate a grievance. The verbal grievance should include the date, the facts in support of the complaint, and the relief requested.

- b. Upon request, supervisors must provide employees with the necessary form and a copy of the grievance procedure.
- c. Formal/Written Initiation of Grievance
  - (1) An employee must initiate a formal or written grievance with the immediate supervisor within thirty (30) calendar days after the event or action which is the basis for the grievance.

The formal/written grievance must be initiated on the Department of Social Services – Local Agency Employee Grievance Form (hereafter referred to as Grievance Form). It may be hand-delivered, faxed, e-mailed, or mailed to the immediate supervisor.

- (2) The supervisor must meet with the employee within five (5) work days of receipt of a written grievance for the purpose of fact-finding. The only persons who may be present at this meeting are the employee, the supervisor, and appropriate witnesses. Witnesses may only be present while providing testimony.
- (3) The supervisor must provide a written response to the employee within five (5) work days following the meeting. That response is to be provided on the Grievance Form or an attachment to the Grievance Form.

### 3. Second Step

- a. If the supervisor's reply is unacceptable to the employee, and the employee desires to continue the grievance, the employee may advance the grievance to the Director by documenting the request on the original Grievance Form and sending it to the Director.
- b. The request must be received by the Director within five (5) work days following the date the employee received the written first step response.
- c. The Director shall meet with the employee within five (5) work days of receipt of the grievance record. The purpose of the meeting is fact-finding.

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- d. The Director must provide a written response to the employee within five (5) work days following the second-step meeting. That response is to be provided on the original Grievance Form or an attachment to the Grievance Form.
- e. Witnesses are permitted at the second step meeting, but only while providing testimony.

### 4. Third Step

- a. If the Director's reply is unacceptable to the employee and the employee desires to continue the grievance, the employee may advance the grievance to the LDSS Board by documenting the request on the original Grievance Form and sending it to the LDSS Board or personnel committee of the board, as applicable.
- b. The request must be received by the Board within five (5) work days following the date the employee received the written second step response.
- c. The LDSS Board, or the personnel committee of the LDSS Board, shall meet with the employee within five (5) work days of receipt of the grievance record. The purpose of the meeting is fact-finding.
- d. The persons that may be present at this meeting are the employee, the LDSS Board members, appropriate witnesses, and at the employee's option, a representative for the employee. Witnesses may be present at the meeting only while providing testimony.
- e. If the employee is represented by legal counsel, the LDSS likewise has the option of being represented by counsel. Thus, the employee must advise the board at the time the grievance is advanced to the third step that the employee will be or is represented by legal counsel. The role of the representative or legal counsel is to assist the employee and is not to be actively involved in advocating or arguing on behalf of the employee or to examine witnesses.
- f. The LDSS Board must provide a written response to the employee within five (5) work days following the third-step meeting. That response is to be provided on the original Grievance Form or an attachment to the Grievance Form.

### 5. Qualifying the Grievance for the Administrative Hearing

- a. If the LDSS Board's response is unacceptable to the employee, the employee may request qualification of the grievance for an administrative hearing. The employee must document this request on the original Grievance Form.

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- b. The qualification request must be received by the Director within five (5) work days following the date the employee received the written third-step response to the grievance.
- c. Acting on behalf of the LDSS Board, within five (5) workdays of the Director's receipt of the qualification request, the Director must determine whether the grievance qualifies for an administrative hearing and return the original grievance record to the employee with the written qualification decision.
- d. If it is determined that the grievance does not qualify for an administrative hearing, the employee may appeal the decision to the circuit court having jurisdiction in the locality where the employee is/was employed.
  - (1) An appeal is made by filing a notice of appeal with the LDSS Board within five (5) work days following the date the employee received the qualification decision. The appeal must be documented on the original grievance record.
  - (2) Within ten (10) calendar days following the date of the qualification appeal, the Director, on behalf of the LDSS Board, shall transmit to the clerk of the circuit court for that jurisdiction a copy of the full grievance record, the qualification decision of the Director, the notice of appeal, and any exhibits.
  - (3) A list of evidence furnished to the circuit court shall also be furnished to the employee.
  - (4) A scheduling request must be made to the clerk of the circuit court for that jurisdiction. The circuit court is required to hear the appeal on this issue within thirty (30) days of receiving the grievance record.
  - (5) The circuit court may affirm, reverse, or modify the decision of the LDSS.
  - (6) The circuit court must render a final decision 15 days after the conclusion of the hearing of the appeal. The circuit court's decision cannot be appealed.

### **E. Administrative Hearing**

If the grievance is determined to qualify for an administrative hearing, the grievance will proceed to a hearing before a panel or an administrative hearing officer as provided below:

1. In cases involving a termination or retaliation, the LDSS Board may choose to use an administrative hearing officer. If a hearing officer is used, the hearing officer shall be appointed from a list maintained by the Executive Secretary of the Virginia Supreme Court. The costs for the hearing officer will be borne by the LDSS.

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2. For all hearings, except those for which a hearing officer is appointed, the panel shall be formed as follows:
  - a. A panel shall consist of three members:
    - (1) One member appointed by the employee;
    - (2) One member appointed by the LDSS; and
    - (3) A third member selected by agreement of the two panel members or, if the two do not agree, by appointment of the Chief Judge of the circuit court in the jurisdiction in which the grievance arose.
  - b. The employee and the LDSS must select their panel members within five (5) work days following their receipt of notice that the grievance qualifies for an administrative hearing. Each party shall notify the other of the name, address, telephone, and e-mail address of the panel member chosen as soon as possible.
  - c. The employee's and the LDSS's panel members shall discuss the selection of a third member. If agreement cannot be reached within five (5) work days, the panel members shall notify the Chairman of the LDSS Board and the employee of their failure to agree. The Chairman of the LDSS Board will notify the Chief Judge of the circuit court for that jurisdiction that agreement was not reached and request that the Judge appoint the third panel member.
  - d. The third panel member shall be the chairperson of the panel.
  - e. To insure an impartial panel, such panels shall not be composed of any person having direct involvement with the grievance being heard or with the problem giving rise to the grievance. Persons so excluded include:
    - (1) Any person having a direct involvement in the grievance or the complaint or dispute giving rise to the grievance;
    - (2) Supervisors and managers of the grievant and the Director;
    - (3) Persons residing in the same household as the grievant;
    - (4) Relatives or the spouse of a party;
    - (5) Any attorney who has any involvement in the grievance or the dispute giving rise to the grievance; and,
    - (6) The partner, associate, employee or co-employee of any Attorney involved in the grievance or dispute giving rise to the grievance.

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- f. The full panel selection should be completed by the tenth (10th) work day following qualification for an administrative hearing. However, this time limit may be extended in instances where the agreement on a third panel member has not been reached.

### 3. Communication with Panel Members/Hearing Officer

The parties should not discuss the substance of the grievance or the problem giving rise to the grievance with any panel member or the hearing officer prior to the administrative hearing. All matters requiring the attention of the panel/hearing officer should be communicated in writing with copies to all parties.

### 4. Hearing Date

The full panel/hearing officer will set the date, time, and place for the administrative hearing, which should be held within ten (10) work days following the selection of the full panel or appointment of the hearing officer. The panel chairperson/hearing officer shall immediately notify the employee and the LDSS of the hearing date. The administrative hearing shall be conducted in the locality where the employee is/was employed, unless the hearing officer/panel unanimously decides that another location is appropriate.

### 5. Case Presentation

The employee and the LDSS may be represented by legal counsel, or other representative, at the administrative hearing. Such representatives may examine, cross examine, question, or present evidence before the panel. The representative does not have to be an attorney. If a party is represented, the representative may not provide testimony or be called as a witness by the party s/he is representing.

### 6. Administrative Hearing Procedure

- a. The panel/hearing officer shall determine the propriety of attendance at the administrative hearing of persons not having a direct interest in the hearing.
- b. The panel/hearing officer may, at the beginning of the administrative hearing, ask for statements clarifying the issues involved.
- c. In a grievance involving a disciplinary action, the LDSS shall present its case first. In all other grievances, the employee shall proceed first. The panel/hearing officer may, at its discretion, vary this procedure, but shall afford full and equal opportunity to all parties for presentation of any material or relevant proofs.
- d. The employee and Director, or their representatives, shall present their claims and proofs and witnesses who shall submit to questions or other examination.



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- e. Exhibits may be received in evidence, and when so received shall be marked and made part of the record.
- f. The parties shall produce such additional evidence as the panel/hearing officer may deem necessary to gain an understanding of and make a determination about the dispute. The panel/hearing officer shall be the judge of the relevance and materiality of the evidence offered. All evidence shall be taken in the presence of the full panel/hearing officer and of the parties.

### 7. Hearing Decision

- a. The panel/hearing officer, in rendering its decision, shall be guided, but not necessarily bound by the relief specified by the employee in the grievance. The panel shall render its decision in writing within thirty (30) calendar days of the administrative hearing and distribute copies to the employee and the LDSS Board. If the decision is being made by a panel, it shall be decided by a majority vote and shall be set forth in writing. The administrative hearing decision of the panel/hearing officer shall be final and binding provided that the relief is consistent with the provisions of law and written policy.
- b. A party may challenge an administrative hearing decision on the basis that the relief granted is not consistent with law and/or written policy. Such appeal must be made to the LDSS Board in writing, and it must be received by the Board within 5 workdays following the challenging party's receipt of the written administrative hearing decision.
- c. If a written request to reconsider the panel decision is submitted to the panel chairperson or hearing officer within five (5) work days of receipt of the decision, the panel, by majority vote or the hearing officer, may elect to review its decision and/or reopen the hearing for good cause shown.
- d. Appeals of administrative hearing decisions shall be decided by the LDSS Board within 10 workdays of the LDSS Board's receipt of the appeal, unless the LDSS Board has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the Commonwealth's Attorney.
- e. The LDSS Board is responsible for ensuring that the administrative hearing decision is implemented.
- f. Either party may petition the circuit court in the jurisdiction where the employee is employed for an order requiring implementation of the decision of the panel/hearing officer.

### F. Compliance

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The failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the administrative hearing, without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five (5) work days of receipt of written notification by the other party of the compliance violation. Such written notification by a grievant shall be made to the Director, unless the Director is the grievant. If the Director is the grievant, the notification should be made to the LDSS Board.

The Director shall determine compliance issues unless the grievant is the Director. If the Director is the grievant, the LDSS Board shall make the determination on compliance. Compliance determinations may be challenged by the grievant if a petition is filed with the circuit court in the jurisdiction in which the employee is employed within thirty (30) calendar days of the compliance determination.

The Virginia Department of Social Services has no role or responsibility in assuring that the LDSS has complied with the Grievance Procedure steps.

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### Section III Termination / Separation

#### Purpose

The purpose of this policy is to address types of separation from the LDSS, related procedures, and the benefits to which separated or terminated employees may be entitled.

#### Scope

This policy applies to all employees.

#### A. Definitions

1. Accrued leave

Annual, sick, compensatory and/or overtime leave that an employee has accumulated per pay period based on their years of service.

2. Discharge

An employee's involuntary separation from employment.

3. Layoff

An involuntary separation from employment as a result of a workforce reduction or re-organization.

4. Reasonable notice

At least two weeks notice before voluntary separation or resignation from employment.

5. Resignation

An employee's voluntary separation from employment.

6. Separation

Voluntary or involuntary end of employment.

7. Termination

Involuntary loss of employment due to disciplinary discharge, substandard performance, violation of the Standards of Conduct or other basis.

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### **B. Types of Termination / Separation**

#### 1. Resignation

- a. Resignation is an employee's voluntary separation from employment with the LDSS.
- b. Advance Notice
  - (1) An employee who plans to resign is asked to provide the Director with at least two weeks' notice.
  - (2) An employee's failure to give reasonable notice of the resignation may be documented in the employee's personnel file.
  - (3) Once the resignation has been received by the LDSS, it is final, unless:
    - a. The Director or LDSS Board makes or expresses an intent to make a counteroffer within five (5) workdays of receipt of the resignation as authorized in the approved local compensation plan for that local department; or,
    - b. the employee provides written notice of rescission of the resignation to the Director or LDSS Board (when the employee is the Director) within five (5) workdays and the employee's rescission is accepted in writing by the Director or LDSS Board (when the Director is the employee).
    - c. Acceptance of a rescission of resignation is at the discretion of the Director or Local Board (when the employee is the Director) and is not grievable.

#### 2. Discharge/Termination

For the policy on Discharge/Termination, see the Standards of Conduct, Performance Evaluation policies.

- a. Employees discharged or terminated should be provided with a pre-termination notice.
- b. Non-probationary employees who are discharged or terminated should be provided with an opportunity for a pre-termination meeting.

#### 3. Layoff

For the policy on layoff, see Layoff policy earlier in this Chapter.

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### 4. Separation

Voluntary or involuntary separation may occur due to an employee's: resignation; layoff; disciplinary discharge; failure to return from leave with or without pay status, or death. There may be other causes of separation from employment in addition to the reasons listed above.

Separation upon the employee's failure to return to work following the expiration of a period of leave with or without pay is treated as job abandonment for purposes of unemployment compensation, if notice of intent not to return was not provided to the LDSS.

### C. Benefits upon Termination / Separation

In addition to retirement benefits, employees separating from employment with the LDSS may be entitled to the following:

#### 1. Payment for Accrued Leave

Employees separating from employment with the LDSS may be entitled to receive payments for accrued annual, sick, compensatory and/or overtime leave, in accordance with the various leave policies. See policy on General Leave and Medical Leaves of Absence in Chapters 3 and 4, respectively.

#### 2. Health Insurance

Employees separating from employment with the LDSS may be eligible to continue health plan coverage under the provisions of the Continuation of Health Plan Coverage Policy.

### D. Recording Date of Termination / Separation and Accrued Leave

#### 1. Employee Not on Leave

When an employee who is not on leave terminates or separates from LDSS' employment, the termination/separation date is the last day the employee worked.

#### 2. Employee on Leave

When an employee on leave with or without pay terminates or separates from LDSS's employment, the termination/separation date is the last day that the employee was on leave.

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### Section V Extended Health Plan Coverage

#### Purpose

The purpose of this policy is to notify employees of continuation of health plan coverage and/or flexible medical spending accounts after an event which results in the loss of coverage.

#### Scope

This policy applies to all employees who participate in the LDSS health plan or in its flexible spending accounts.

#### A. Definitions

1. COBRA

The Consolidated Omnibus Budget Reconciliation Act (COBRA), and its amendments, which mandate continuation of health plan coverage under certain circumstances.

2. LDSS

The LDSS or its Plan Administrator.

3. Gross Misconduct

Egregious or willful misconduct in disregard of the LDSS' interest. Examples are violence in the workplace and mishandling of LDSS funds.

4. Qualified Beneficiary Employee

An employee who loses health plan coverage when a qualifying event occurs such as reduction of work hours, placement on leave without pay, or employment terminates for any reason other than gross misconduct.

5. Qualified Beneficiary Spouse

A spouse or former spouse of an employee who was participating in the health plan or other medical benefit on the day prior to loss of coverage due to a qualifying event.

6. Qualified Beneficiary Dependent



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A dependent as defined under the policy who was participating in the health plan or other medical benefit on the day prior to loss of coverage due to a qualifying event. In addition any child born to or placed for adoption with a covered employee during the period of extended health plan coverage is considered a qualified beneficiary.

### 7. Qualified Event

An event that will result in the loss of health plan coverage unless continued coverage is elected.

### 8. Qualified Health Plan

A group health plan that provides health and/or medical care. Such plan may include certain § 125 cafeteria plans (e.g., flexible health care spending accounts); health reimbursement arrangements, employee assistance programs, and long term care plans.

## B. Qualifying Events

The following events are qualifying events that cause a loss of plan coverage and qualify the employee, the employee's spouse, the employee's former spouse, or the employee's dependents for continuation of health plan coverage:

### 1. For Employee

When health plan coverage is lost due to:

- a. reduction in work hours;
- b. leave without pay; or
- c. the employee's loss of employment for any reason other than gross misconduct.

### 2. For Employee's Spouse

When health plan coverage is lost due to:

- a. the death of the employee;
- b. the reduction in the employee's work hours ;
- c. the employee's loss of employment for any reason other than gross misconduct;
- d. the employee becomes eligible for Medicare benefits; or
- e. the employee divorces or legally separates .

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### 3. Qualifying Event for Dependent of Employee

When health plan coverage is lost due to:

- a. the employee's death;
- b. reduction in the employee's work hours;
- c. the employee's loss of employment for any reason other than gross misconduct;
- d. the employee's eligibility for Medicare;
- e. parents' divorce or legal separation; or
- f. the dependent's loss of eligibility for dependent status.

### C. Additional Information on Extended Health Plan Coverage

If an employee has questions about extended health plan coverage, the employee should contact the LDSS health plan administrator

### D. Notice by Employee

All notices that an employee and/or the qualified beneficiaries must give are also to be made to the LDSS health plan administrator. An employee and/or the qualified beneficiaries must also notify the contact person of any change in the status or the address of the qualified beneficiaries or the employee.

### E. Notice of Qualifying Event

An employee and/or the qualified beneficiaries must notify the LDSS of a qualifying event within 60 days of the qualifying event. Notification should be made to the LDSS health plan administrator. Upon receipt of such notice, the LDSS will provide the employee and qualified beneficiaries with an election of extended health plan coverage form.

### F. Continued Plan Participation

#### 1. Election

Employees and other qualified beneficiaries each have the right to independently make an extended coverage election to continue health benefit coverage. A covered employee or the covered employee's spouse may, however, elect on behalf of all other qualified beneficiaries. A parent or legal guardian may elect on behalf of a minor child. An employee and/or each qualified beneficiary may waive extended

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health plan coverage independently of each other (e.g., the employee decides not to elect continuation coverage but his spouse does).

### 2. Time Period to Make Election

An employee and/or qualified beneficiary has 60 days from receipt of the Election Notice or the date of loss of coverage, whichever is later, to make an election. If an election is made during this time period, the coverage dates back to the qualifying event and there is no gap in coverage.

### 3. Revocation of Waiver of Coverage

If an employee or qualified beneficiary waives extended health plan coverage, the waiver may be revoked at any time during the 60-day election period. If revocation of the waiver occurs, continuation coverage begins on the date the waiver is revoked, not the date of the qualifying event. This means that there will be a gap in coverage.

### 4. Length of Continuation Coverage

Continuation coverage is for a period of 18 months unless the employee leaves for military duty. Employees leaving for military duty have the right to elect up to 24 months of coverage. This period can be extended for an additional 11 months if a qualified beneficiary has been determined to be disabled by the Social Security Administration during the continuation period. The disabled qualified beneficiary must provide the LDSS with notice of the disability determination within 60 days of such determination and if the determination of disability is within the initial 18 month continuation period, participation will be extended for another 11 months.

### 5. Second Qualifying Event

If during the extended health plan coverage period, a second qualifying event occurs, the employee and/or qualified beneficiary may elect an additional 18 months of coverage (total 36 months). Notice of a second qualifying event must be given to the LDSS within 60 days.

### 6. Date Coverage Begins

Coverage begins on the date that coverage would otherwise have been lost, provided that an election is made within the election period and the premium payments are made in full and on a timely basis. For example, if the qualifying event is on August 1 and the election of coverage is made on September 19, all “covered” medical expenses that were incurred during the August 1 through September 19 period would be paid for under the plan, provided full, timely payment of the premiums is made.

### 7. Failure to Elect Continuation Coverage

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If an employee waives making an election and coverage is lost, and if the employee or qualified beneficiary joins another group health plan within 63 days, pre-existing exclusions will not apply under the new plan.

### **G. Premium Payments**

#### 1. First Payment

If continuation coverage is elected, the first payment must be made within 45 days of the date of the election. The first payment due will be for the full amount of premiums owed from the date of the qualifying event to the date payment is made.

#### 2. Subsequent Payments

Each monthly payment following the initial payment must be made by the due date or coverage will cease. There is a 30 day grace period which, if a late payment is made within that period, coverage will be reinstated.

#### 3. Amounts of Payment

The employee and/or qualified beneficiary must pay 100% of the premium. The LDSS may charge an administrative fee of 2%; if this is done the premium payments would be 102% of the premium costs. If disability occurs, the plan could charge 150% of the premium costs after the initial 18 month period.

#### 4. Termination for Failure to Pay Premiums

The failure to make a timely payment will be cause for termination of continuation coverage.

### **H. Coverage Ends**

#### 1. Terminates at End of Maximum Coverage Period

Coverage will end at the end of the maximum period of coverage, 18 months in most instances, 29 months if a qualified beneficiary is disabled, or 36 months if a second qualifying event occurred.

#### 2. Coverage Can End Earlier Than Maximum Coverage Period

Coverage may end earlier than the maximum coverage period if one of the following occurs:

- a. Premiums are not paid on a timely basis.
- b. The LDSS ceases to maintain any group health plan.

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- c. If after an extended health plan coverage election, coverage is obtained in another employer group health plan. However, if the coverage in another group health plan was obtained prior to the election, continuation coverage can not be terminated by the LDSS, or if the coverage in another plan has pre-existing exclusions or limitations or is not as comprehensive as the extended health coverage, the LDSS cannot terminate coverage.
- d. If after an extended health plan coverage election, Medicare coverage is obtained during the continuation period.

### I. Other Provisions

#### 1. Open Enrollment

An employee or other qualified beneficiary may add individuals to the health plan during the open enrollment period on the same terms as regular plan participants. These added insureds, however, do not have extended health plan coverage rights and their participation in the plan is only as long as the qualified beneficiary remains eligible and includes them in the plan.

#### 2. Appeals on Denial of Coverage

If a claim for plan benefits is submitted and is denied, the covered individual will receive notice of the reason for the denial. This notice will be in writing and must be provided within 90 days of the submittal of the claim. The notice will state the reasons for the denial, any additional information needed to support the claim, and procedures for appealing the denial. The covered individual has 60 days to appeal the denial and within 60 days the plan will provide a decision on the appeal. If the claim is still denied, the covered individual can contact the State Corporation Commission, Insurance Division, in Richmond to find out information on how to appeal the plan's denial of coverage.

#### 3. Family and Medical Leave

An employee who is on Family and Medical Leave is entitled to have health plan coverage continue for the duration of the leave on the same payment terms as if the employee had been working. This coverage is not the same as extended health plan coverage. Family and Medical Leave is not a qualifying event for extended health plan coverage; however, if at the end of the Family and Medical Leave the employee notifies the employer that he or she will not be returning to the position, extended health plan coverage continuation rights commence at that point.

### J. HIPAA Benefits

#### 1. Conversion Rights

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Some plans permit a covered individual to convert to an individual policy at the end of extended health plan coverage. If the LDSS's plan permits such an election, the employee and/or covered beneficiaries will receive a notice of such option no later than 180 days before the end of coverage. The premium for the individual policy may cost more than the extended health plan coverage and may provide fewer benefits. If an election to an individual policy is made, pre-existing conditions cannot be imposed on the coverage. The conversion option is not available if the qualified beneficiary terminates coverage prior to the end of the coverage period.

### 2. Enrollment in Spouse's Plan

If extended health plan coverage is exhausted, HIPAA (the Health Insurance Portability and Accountability Act) gives a qualified beneficiary a right to enroll in a spouse's plan for which the beneficiary would otherwise be eligible to participate. The beneficiary does not have to wait for the open enrollment period to join. However, the beneficiary must request such coverage within 30 days of the date extended health plan coverage ends.

### 3. Certification of Credible Coverage

At the time participation in the health plan ends (e.g., at termination and at the end of the extended health plan continuation of coverage period) each covered individual will be sent a certificate of creditable coverage. This form allows the former plan participants to enroll in another group health plan without any pre-existing exclusions or limitations, provided such enrollment occurs within 63 days of the termination of coverage.